No. 06-15[illegible] 2007

In the
Supreme Court of the United States

NATASHA LATHAM,
Petitioner,

v.

THE STATE OF MICHIGAN,
Respondent.

On Petition for a Writ of Certiorari to the Michigan Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I. DID THE MICHIGAN COURTS FAIL TO APPLY THE LEGAL STANDARDS ESTABLISHED BY THIS COURT TO EVALUATE PETITIONER'S REQUEST FOR AN EVIDENTIARY HEARING TO PROVIDE RECORD SUPPORT FOR HER CLAIM SHE WAS DEPRIVED OF HER RIGHT TO APPEAL BY THE INEFFECTIVE REPRESENTATION OF HER FIRST APPELLATE ATTORNEY, WHO FAILED TO PROPERLY REQUEST AN EVIDENTIARY HEARING IN SUPPORT OF PETITIONER'S CLAIM SHE WAS DEPRIVED OF A REASONABLE PROBABILITY OF ACQUITTAL BY THE INEFFECTIVE REPRESENTATION OF HER TRIAL COUNSEL, WHO FAILED TO PRESENT PETITIONER'S DEFENSE AND REFUSED TO PERMIT HER TO TESTIFY; WHERE A PROPERLY SUPPORTED REQUEST FOR SUCH AN EVIDENTIARY HEARING WAS FIRST PRESENTED TO THE STATE APPELLATE COURT ON MOTION FOR RECONSIDERATION, AND SUBSEQUENTLY DENIED BY THE STATE COURTS AT EVERY LEVEL, IN VIOLATION OF U.S. CONST, AMS. V, VI AND XIV?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Natasha Latham ("Petitioner" or "Ms. Latham"), respectfully prays that a Writ of Certiorari issue to review the February 27, 2007 Order of the Michigan Supreme Court, *People v. Natasha Latham*, 477 Mich. 1037; 727 N.W.2d 609 (2007) (App. A), denying Petitioner's timely filed Motion for Reconsideration of the November 29, 2006 Order of the Michigan Supreme Court denying Petitioner's timely filed Application for Leave to Appeal, *People v. Natasha Latham*, 477 Mich. 947; 723 N.W.2d 847 (2006) (App. B).

OPINIONS AND ORDERS BELOW

On March 31, 2003, Petitioner was jury-convicted of one count of Assault with a Dangerous Weapon (Felonious Assault, or "FA"), contrary to MCL 750.82; MSA 28.277, and one count of Possession of a Firearm During the Commission of a Felony ("Felony Firearm"), MCL 750.227b; MSA 28.424(2), in the Wayne County Circuit Court, Criminal Division. On April 25, 2003, Petitioner was sentenced to a mandatory two year prison term for Felony Firearm, and to a consecutive term of one year probation for FA (App. H). The trial court then *sua sponte* ordered Ms. Latham released on bond pending appeal, finding she posed no threat to the community; she has remained free on appeal bond during all the appellate proceedings which have ensued. The trial court will on longer have authority under Michigan law to permit Ms. Latham to remain on bond pending appeal once this Court concludes its review of this case. *People v. Jones*. 467 Mich. 301; 651 N.W.2d 906 (2002). Thus, a mandatory two year prison term looms before her if this Petition is unsuccessful.

On November 16, 2004, the state Court of Appeals issued an Opinion affirming Ms. Latham's convictions in all respects (App. G). On January 7, 2005, her timely filed Motion for Reconsideration was denied (App. F). On August 30, 2005, the state Supreme Court denied her timely filed Application for Leave to Appeal. *People v. Natasha Latham*, 474 Mich. 855; 702 N.W.2d 582 (2005) (App. E).

On October 5, 2005, Ms. Latham timely filed in the trial court Motions for Relief from Judgment, for a New Trial, and for an Evidentiary Hearing on the issue of ineffective assistance of counsel. On November 4, 2005, the trial court issued an Order denying all Petitioner's motions (App. D). On July 10, 2006, the state Court of Appeals issued an Order denying the Petitioner's timely filed Application for Leave to Appeal, which included a request for a remand for an evidentiary hearing on the issue of ineffective assistance of counsel (App. C). Petitioner then timely filed an Application for Leave to Appeal in the Michigan Supreme Court, followed by a Motion for Reconsideration, both of which included a request for a remand for an evidentiary hearing on the issue of ineffective assistance of counsel; leading to the issuance of the two Orders identified above; an Order denying Leave to Appeal (App. A), and an Order denying Reconsideration (App. B), from which this Petition is filed.

STATEMENT OF JURISDICTION

Petitioner seeks review of the February 27, 2007 Order issued by the Michigan Supreme Court, *People v. Latham*, 477 Mich. 1037, *supra* (App. A), denying the Petitioner's timely filed Motion for Reconsideration of the November 29, 2006 Order of the Michigan Supreme Court denying Petitioner's timely filed Application for Leave to Appeal, *People v. Latham*, 477 Mich. 947, *supra* (App. B), from the

July 10, 2006, Order of the Michigan Court of Appeals (App. C), and from the November 4, 2005 Order of the trial court (App. D), identified *supra*.

STATUTORY PROVISION INVOLVED

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

A. Procedural History

Petitioner was charged with one count of Felonious Assault and one count of Felony Firearm, following a verbal argument between her boyfriend, Duane Berry ("Berry) and her neighbor Michelle Wilson ("Wilson") on November 13, 2002, outside two apartment buildings in Detroit (App. I, ¶¶ 19, 47-56). After the argument ended, Wilson filed a false police report claiming Ms. Latham pointed a gun at her and threatened to kill her. Although convicted by jury, Ms. Latham has always asserted her actual innocence of these charges (App. I, ¶¶ 4, 5, 17, 18, 129, 130). Ms. Latham prepared an extensive defense for her trial lawyer, Brian Gagniuk (Gagniuk), who agreed to present her defense but then rested without presenting any defense at all (App. I, ¶ 4-15) (T, I, 80-84; T, III, 5). Petitioner was then convicted as charged.

Petitioner then retained her first appellate attorney, Delphia Burton ("Burton") to represent her at sentencing and on direct appeal of right. Petitioner and Berry gave her all of their information about the case, including Gagniuk's many deficiencies (App. I, ¶¶ 128-129; App. J, ¶ 73). Burton told the trial court at sentencing she would file a motion for new

trial based on ineffective assistance of trial counsel if review of the trial transcripts supported it (4/25/03, 13-15). However, she never filed such a motion even though the "brief" she ultimately filed in the state Court of Appeals raised such claims. In fact, Burton's "brief" violated applicable law; the issues raised were based on facts not of record, yet no Affidavits were submitted in support; and Burton filed no post-conviction motion in the trial court for an evidentiary hearing on the issue of ineffective assistance of counsel, and filed no motion in the Court of Appeals for a remand for such an evidentiary hearing. All of Ms. Latham's subsequent post-conviction pleadings have requested an evidentiary hearing on the issue of ineffective assistance of both trial and first appellate counsel. All such requests have been denied by the Michigan Courts. As a result, Ms. Latham has never had such a post-conviction evidentiary hearing, a hearing critical to her ability to obtain real appellate review of her case.

After Burton filed the "brief" in the direct appeal, the relationship between her and Ms. Latham broke down, in part because Ms. Latham, dissatisfied with the "brief", asked Burton to file a supplemental brief, which was never done. In addition, Burton told Ms. Latham she was changing her legal practice; she would no longer be handling criminal appeals (App. I, ¶¶ 130, 132-139; App. P).

Ms. Latham then retained undersigned counsel, who substituted as her attorney in the state Court of Appeals prior to decision. New counsel learned upon review of the record how little had been done by the previous attorneys. New counsel had to:

A. Order additional transcripts of the trial court proceedings, including important sections of the trial transcripts;

B. Locate and interview many witnesses, one of whom proved very difficult to locate and speak with; and

C. Research the factual issues and obtain Affidavits and Offers of Proof to properly support a Motion to Remand for an evidentiary hearing on the issue of ineffective assistance of counsel, and draft a proper Supplemental Brief on Appeal to replace Burton's Brief.

Burton had failed to order transcripts of the following trial proceedings: voir dire, opening statements, jury charge, jury deliberations; sentencing; or of pretrial proceedings held on: November 27 and December 4, 2002; January 10, and March 14 & 20, 2003. New counsel promptly ordered these transcripts, causing further delay in the appeal. And when the complete trial transcripts were obtained, new counsel discovered numerous errors of record that Burton had overlooked because she failed to order the complete record. New counsel also discovered Burton had never filed a post-conviction motion for new trial or for an evidentiary hearing in the trial court on the issue of ineffective assistance of trial counsel, and had never filed a motion in the state Court of Appeals to remand for such a hearing. Burton had done nothing to obtain Affidavits documenting the evidence that should have been offered at trial by trial counsel, but was not. Further, it was obvious that the "brief" Burton filed was hopelessly inadequate to meaningfully present her issues to the appellate Court:

A. The first issue in Burton's "brief" argued that Petitioner was denied a fair trial because trial counsel denied her the right to testify. This issue could not be addressed on the existing record; no affidavit of the defendant was submitted in support; no evidentiary hearing was requested to establish that trial counsel's failure to call Petitioner to testify was not a matter of trial strategy. The state appellate Court denied relief on this issue precisely because there was nothing in the record (and no offer of proof) that Ms. Latham wanted to testify (App. G, at 1).

B. The second issue in Burton's "brief" argued Ms. Latham received ineffective representation from trial counsel, who failed to present her defense, and did not allow her to testify. This issue also could not be addressed by the state appellate Court on the existing record. No Affidavits were filed summarizing what Ms. Latham and other witnesses could have testified to, or why they did not testify; no request was made for an evidentiary hearing to establish that trial counsel's failure to present a defense or to call Petitioner to testify were not matters of trial strategy. The state appellate Court denied relief: "Defendant has failed to provide support for the majority of these claims." (App. G, at 3).

C. The third issue in Burton's "brief" argued Ms. Latham was deprived of a fair trial because of improper prosecutorial comments on her failure to testify. The state appellate Court noted that trial counsel failed to object to these prosecutorial comments, which were thus reviewed (unsuccessfully) under the more stringent "plain error" standard (App. G, at 2). Burton's Brief should have, but did not,

argue that trial counsel provided ineffective assistance by failing to object to the improper prosecutorial remarks; and should have requested an evidentiary hearing to establish the failure to object was not a matter of trial strategy. Thus, the state appellate Court did not address this issue.

D. The final argument in Burton's "brief" asserted Ms. Latham was deprived of a fair trial by the cumulative effect of the previously identified three errors. However, since none of the previous three issues were supported by the record, there could not possibly be cumulative error. The Michigan Court of Appeals so ruled (App. G, at 3-4).

Also, Burton's "brief" contained numerous factual allegations supported only by the phrase: "upon information and belief, " which were not supported by the record, or by any Affidavits. Finally, despite having completely failed to timely request an evidentiary hearing in the trial court, Burton's "brief" did, in the "relief requested" section, request a remand for an evidentiary hearing; but this request was doomed to failure, as unsupported by any Affidavits or Offers of Proof.

The deficient presentation in Burton's "brief" represented clear-cut ineffective assistance of appellate counsel. This "brief", for practical purposes, guaranteed Ms. Latham's convictions would be affirmed, resulting in an employed, religious young woman with no prior police contacts, from a strong, law- abiding family, having to serve a mandatory two-year prison term for a crime she denies having committed, where her trial attorney completely failed to present her defense, and then rested the case without letting her testify to defend herself, and where her first appellate counsel failed to

present on appeal the necessary Affidavits and Offers of Proof to establish the deficient representation of trial counsel, and the resulting prejudice.

Although new counsel worked diligently to perform the investigation of this case that should have been conducted by trial counsel and by first appellate counsel, and to obtain Affidavits and Offers of Proof to file in the state Court of Appeals in support of a motion to remand for an evidentiary hearing on the issue of ineffective assistance of trial and first appellate counsel, this work was not quite completed as of October, 2004. On October 21, 2004, the state Court of Appeals unexpectedly issued a Notice stating this case was being considered for accelerated decision without oral argument. Under these circumstances, new counsel would not be able to properly perfect Petitioner's appeal of right, and would be unable to provide her with effective assistance of appellate counsel; because he did not yet have all the necessary Affidavits, Offers of Proof, and transcripts. New counsel intended to file a motion to remand in the state Court of Appeals as soon as possible after receipt of the last notarized Affidavit from Virginia Adams (App. L), who is a critical witness who had moved; who was extremely difficult to locate and communicate with; and with whom it was proving extremely difficult to meet with in order to obtain a signed Affidavit. Further, the transcripts of the proceedings on December 4, 2002, January 10, and March 14 and 20, 2003 had still not been filed.

In order to make the state Court of Appeals aware of the status of his investigation of this case, and of the need to file a fully supported and documented motion to remand, and to also file an amended brief on appeal to replace Burton's inadequate "brief", new counsel filed five Motions in the state Court of Appeals on Nov. 1 & 2, 2004: (1) to withdraw

Burton's inadequate "brief"; (2) to permit the filing of the additional transcripts Burton failed to order; (3) for permission to file Ms. Latham's new brief on appeal and motion to remand within 21 days of receiving the final offers of proof in support of the issue of ineffective assistance of trial and appellate counsel; and (4) to permit oral argument. These motions represented that the offers of proof which were being obtained would establish: that trial counsel's representation was deficient in failing to present a significant defense where there was available evidence in support of a defense; that trial counsel promised he would present exculpatory evidence to show Ms. Latham's innocence, and did not; that he failed to inform Ms. Latham he was abandoning her defense; that he told Ms. Latham she would testify, and then rested the defense case without her testimony or consent.

On November 9, 2004, the state Court of Appeals denied all Ms. Latham's motions. On November 16, 2004, that Court issued its Opinion (App. G) rejecting all Burton's inadequately supported arguments, and affirming Ms. Latham's convictions.

On December 7, 2004, new counsel timely filed a Motion for Reconsideration in the Court of Appeals, based on all the sought-after affidavits and transcripts. Exhibit 1 in support of this Motion was a proposed Brief in Support of Motion to Remand, with offers of proof attached, which included a properly supported request for a remand for an evidentiary hearing. The offers of proof demonstrated the strong evidence that Ms. Latham is innocent; clearly established she did not receive effective assistance from either Gagniuk or Burton; and established the need for a remand for an evidentiary hearing on the issue of the ineffective assistance of both trial and appellate counsel. The offers of proof

included Affidavits from Ms. Latham (App. I); from her boyfriend and critical witness, Duane Berry (App. J); from Virginia Adams, an eyewitness to part of the incident who was never investigated by Gagniuk or Burton (App. L); from Detroit Police Officer Kenneth Emerson, who observed the complainant's attempt to confront and pick a fight with Petitioner in a 36th District Court elevator (App. M); from Aprel Roby (App. K), who also observed the incident in the elevator; and from several of Petitioner's relatives (Apps. N,O). The affidavits and other documentary evidence demonstrated Petitioner did not receive a fair trial.

The state Court of Appeals failed to consider the merits of the motion to remand or the offers of proof. On January 7, 2005, the that Court issued a one line Order denying Petitioner's Motion for Reconsideration without comment (App. F). The Michigan Supreme Court then denied Leave to Appeal (App. E).

On October 5, 2005, Petitioner filed in the trial court a motion for relief from judgment, for a new trial, and for an evidentiary hearing, with brief and Offers of Proof in support. On November 4, 2005, the trial court issued an Order denying Petitioner's motions in all respects (App. D). As explained above, leave to appeal was subsequently denied by both the Michigan Court of Appeals and the Michigan Supreme Court (Apps. A, B, C). All these Courts also rejected Petitioner's accompanying request for an evidentiary hearing on the issues of ineffective assistance of trial and first appellate counsel.

B. <u>Combined Facts from the Trial Record and from Offers of Proof</u>

This summary references both the trial evidence and facts supported by the attached Offers of Proof, to assist this Court

in evaluating the merits of Ms. Latham's request for post-conviction relief, and for a remand for an evidentiary hearing.

In May, 2002, Petitioner began staying regularly at the apartment of her brother, Tony ("Tony") in Detroit; he wanted his apartment to appear occupied when he was away, which was often. Petitioner's boyfriend, Duane Berry ("Berry"), often stayed with her (App. I, ¶¶ 20-22; App. J, Duane Berry Affidavit, ¶ 3).[1] At that time, Berry drove a Porsche Boxter subleased from a friend, Matthew Ducco. Berry was concerned about damage to this car (App. I, ¶ 62; App. J, ¶ 11). The Apartment complex management did not seem concerned about residents parking on a grassy area or on a concrete slab when the parking lot was full, so Berry parked in these areas when necessary (App. J, ¶ 13; App. I, ¶¶ 29, 33).

1. <u>Incidents that led up to November 13, 2002.</u>

In June 2002, Tony was approached by the Complainant, Michelle Wilson ("Wilson"), who told him "his girlfriend" was having "all types of men" over. The brother told her the

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[1] The first appellate attorney did not order the complete trial transcript; just the testimony and closing arguments. New appellate counsel ordered the voir dire, opening statements, jury instructions, verdict, and sentence. Thus, although the trial took place on two days, March 27 and 31, 2003, there are four volumes of trial transcripts. In this Petition, the voir dire and concluding proceedings on March 27 are referred to as "T, I;" the remaining proceedings on that day as "T, II." The initial proceedings on March 31 will be referred to as "T, III," and the final proceedings on that day as "T, IV." The March 20, 2003 search & seizure suppression hearing will be referred to as "Mot." The sentencing hearing on April 25, 2003 will be referred to as "S."

"girlfriend" was his sister. Tony later told Petitioner what Wilson had said, that Wilson appeared angry with her, and that Wilson lived in the adjacent building. Petitioner had never met Wilson, and wondered what her concerns were; but, deciding she was nosy or jealous, Petitioner brushed it off (App. I, ¶¶ 23, 25-28).

Petitioner then learned Wilson had begun closely watching her and Berry's comings and goings from her window. One time, Berry saw Wilson watching him while she was wearing only her underwear. Wilson's behavior demonstrated an obsessive, jealous hatred, primarily for Ms. Latham, but for Mr. Berry as well. (App. J, ¶¶ 6-24; App. I, ¶¶ 16-17,23-45).

The apt. management sent Tony a letter stating someone had reported he had unauthorized occupants living in his apt., who were parking illegally on the grass and sidewalks. The letter warned these infractions were grounds for eviction. Petitioner and Berry logically assumed Wilson made this report. (App. I, ¶¶ 29-30; App. J, ¶ 14).

In October, Wilson began to regularly park her car to block Berry's Porsche in the parking lot. Usually he was able to maneuver and get out without damaging his own car. (App. J, ¶¶ 15, 17). From November 10-13, 2002, Wilson began a campaign of harassment; she repeatedly started arguments with Berry, tried to draw Petitioner into the conflict, and then challenge Petitioner to a fight. Petitioner always walked away from these provocations. (App. I, ¶¶ 31-32, 35, 41-43, 88; App. J, ¶¶ 10, 16-42).

Three incidents occurred on November 10. First, Petitioner and Berry went outside, and found Wilson's car parked blocking in Berry's Porsche; Wilson refused to move

her car, and initiated an angry profane verbal exchange with Berry. Petitioner told Berry to get in the car and not bother with Wilson. Berry had to drive over a curb to get out of the lot (App. I, ¶¶ 32-35; App. J, ¶¶ 18-20).

Petitioner and Berry returned later, and Berry parked on the grass below the apt. window. Berry later looked outside and saw Wilson standing behind his car, writing something. Wilson told Berry, provocatively, she was writing down his license plate number "in case she needed it". Wilson and Berry began to argue; Petitioner went to the window and yelled to Wilson to mind her own business. Wilson said she would have the car towed. Outraged, Berry shouted, "If you touch my car, I'll shoot the shit out of you." Wilson, undaunted, responded, "You're not the only one with a gun." Then, Wilson yelled to Petitioner (not to Berry) to "come down and say that shit". Ms. Latham ignored Wilson (App. J, ¶¶ 21-22;App. I, ¶¶ 36-41).

Later, Petitioner and Berry heard a noise, and looked outside. They saw Wilson and two other women staring up at their apt., gesturing and taunting Petitioner to come outside. One woman had a vicious dog, and the other was wielding a baseball bat. Petitioner and Berry ignored them. A neighbor, Virginia Adams, also witnessed this incident. (App. J, ¶ 23; App. I, ¶¶ 42-44; App. L, Affidavit of Virginia Adams, ¶3).

On Nov. 12, Petitioner looked outside and heard Wilson telling Willie, the apt. maintenance man, and Osborne Walker, another tenant, her version of the Nov. 10 events. Wilson complained Petitioner did not live in the apt., and Berry parked his car improperly. Willie said the next time, he would put a "no parking" sticker on the car, and also said: "[W]e got to get them out of here." Later that night, Berry

arrived at the apt. When he parked on the grass underneath the window; there was no sticker on his car. He and Ms. Latham went to bed. (App. I, ¶¶ 45-47; App. J, ¶ 25).

2. Alleged Offense on November 13, 2002, and Ms. Latham's Arrest.

On November 13, 2002, Petitioner and Berry got up at 8:30 a.m. to get ready for work. Berry looked out and saw a large "no parking" sticker on his car window; he believed Wilson was responsible. Angry, he ran downstairs. Petitioner looked out and saw him scraping the sticker off her car. Petitioner left the window, got her cell phone, and called her job to find out the time of her first appointment. While calling, she looked out the window, wearing her pajamas, and holding her cell phone. She saw Wilson drive up and get out of her car. (App. I, ¶¶ 47-49; App. J, ¶¶ 26, 27).

Wilson and Berry got into a verbal argument about his improper parking. Wilson claimed she knew his name was Matthew and where he lived (information she must have got from an illegal LEIN check of the car's license plate number) (T, II, 7, 14-16) (App. I, ¶ 62; App. J, ¶¶ 11, 27)

Berry and Wilson spoke loudly and profanely at each other; Berry moved towards Wilson; Wilson stood her ground. Wilson admitted she could have gone inside her apt. building, but did not; instead, she called for her boyfriend, Leonard Calhoun ("Sterling"), to come down. (T, II, 7, 16-17; App. I, ¶¶ 49-53; App. J, ¶¶ 28, 29).

Ms. Latham opened her apt. window, in her pajamas and holding her cell phone, when Berry was about four feet from Wilson. Afraid Berry was about to assault Wilson, Ms. Latham yelled, "Don't touch her!" Ms. Latham asserts she

did not have a handgun in her possession. (App. I, ¶¶ 48-53; App. J, ¶¶ 28-36).

Wilson admitted at trial she heard Petitioner "yelling" from the window, but claims she did not know what she was saying. Wilson claimed that Sterling came outside, joined Wilson on Wilson's back porch, and argued with Berry. Wilson claimed she was looking at Berry when Sterling allegedly said: "she got a gun in her hand." Wilson claimed she turned and saw Petitioner, standing on her own porch, pointing a gun at her, and threatening to kill her. Wilson repeatedly insisted the two back porches were only three feet apart. Wilson claimed she did not see Petitioner at first because she was looking at Mr. Berry, who was yelling a threat to her about not touching his car (T, II, 8-9, 18-21; App. I, ¶¶ 69, 70)

Wilson first testified that Sterling "snatched her inside [their] doorway." (T, II, 8-10, 19). She then changed her story, and claimed she stayed on her porch, watching Ms. Latham go upstairs, open her apt. window and "hang" out of it, yelling and waving a gun. (T, II, 10, 18-20; App. I, ¶ 70). After Petitioner yelled to Berry, Sterling came outside in his boxer shorts, and stood on his back porch. Wilson then went towards her porch, while yelling at Berry. (App. J, ¶ 21, 31).

Ms. Latham and Berry have a vastly different version of what happened, which the jury never heard. For example, Ms. Latham has measured the porches as about 40 feet apart, not the "three feet" claimed by Wilson (App. I, ¶¶ 47-57, 69; App. J, ¶¶ 26-38). Further, after yelling to Berry from the window, Petitioner never went outside at all; she never had a gun; she never threatened Wilson with a gun (App. J, ¶¶ 32-35; App. I, ¶¶ 66, 69,71). Ms. Adams, the neighbor who did not testify, heard noise and looked outside. She did not hear

anyone mention a gun, and she did not hear Petitioner make any threats. Most importantly, she is sure Natasha Latham did not go downstairs anytime before the police arrived, as alleged by Wilson (App. E, ¶¶ 2-8).

Berry confirms Ms. Latham did not come outside with a gun; she would first have had to get dressed, find a gun, figure out how to pick it up, run downstairs, open the steel security door, step on the porch, hold the gun and threaten to kill Wilson. Wilson was standing near both Berry and Sterling, so Petitioner would have had to point the gun at Berry as well. (App. J, ¶¶ 32-35; App. I, ¶¶ 69-72).

Had Petitioner come outside with a gun, Berry would have immediately intervened, because he knows she has no experience with guns; he would have made sure she put the gun down. Ms. Latham would never point a gun at anyone—certainly not in the direction of three people—including her own boyfriend (App. I, ¶¶ 70, 71, 77-81 App. J, ¶ ¶ 32-34; App. N, S. Carlisle Affid., ¶¶ 7-11, 14; App. O, G. Carlisle Affid., ¶¶ 6-13; App. K, April Roby Affid.; ¶¶ 5-9). Ms. Latham was far too afraid to threaten Wilson (or anyone else) in any way, especially after Wilson revealed on November 10 that she herself had a gun (App. I, ¶¶ 18, 70, 71, 80; App. J, ¶ 34).

After Wilson headed for her porch, Berry looked at Sterling and said, "Dog, you better check her [Wilson]". Sterling replied, "I ain't checkin' shit." Berry then returned to the apt. With that, the verbal argument was over; it had never become threatening or assaultive. (App. J, ¶¶ 27-38; App. I, ¶¶ 47-56).

Berry returned to the apt., and told Petitioner to call management about Wilson. Ms. Latham said she was already

on the phone. Berry went to his car to leave. Wilson called out her window: "Where are you going Matthew? Wait 20 minutes!" Berry gave her the finger and left. (App. J, ¶¶ 37, 38; App. I, ¶¶ 57-58, 61-63).

Petitioner heard the yelling as Berry left. She called Judy at the apt. office. While explaining about Wilson's harassment, Berry called Petitioner on her other line, and told her what Wilson had said, which indicated Wilson had called the police. Judy then told Petitioner to stay away from Wilson. Petitioner called Berry to tell him management downplayed the situation. (App. I, ¶¶ 58-65; App. J, ¶¶ 39, 40. After talking with Berry, Petitioner did not run away or leave the apartment– she had not committed a crime. She got in the shower to get ready for work. (App. I, ¶¶ 66-68).

3. False Police Report, Police Arrival, and Search and Seizure.

Wilson called the police and falsely reported Petitioner came outside, pointed a gun at her, threatened to kill her, then went inside and leaned out her window, waving the gun around. (T, II, 11; App. I, ¶¶ 69, 70). Two Police Officers (P.O.'s), Patrick Jones and Patrice Roman, arrived a few minutes later. Petitioner's account of what happened when the P.O.'s arrived differs from the officers' version. But trial counsel did not call Petitioner to testify to contradict their testimony either at the pretrial Suppression Hearing or at trial. (App. I, ¶108).

Petitioner attests that the P.O.'s entered here apartment without permission while she was in the shower, starting yelling at her, and searched her apartment without permission. Petitioner denied pointing in the direction of a mattress on the living room floor and stating there might be a gun there. She

did not know about any gun. The P.O.'s told Petitioner about Wilson's police report; she explained to them Wilson's report was false, and explained what really happened. She told them about Wilson's harassment and obsessive behavior. While she explained, she saw P.O. Roman searching the apartment, and eventually look under the mattress and come up with a handgun. Petitioner asked to have the gun checked for her prints, but this was never done. Petitioner was arrested and taken to the police car (App. I, ¶¶ 72-84).

P.O. Jones testified at the Suppression Hearing that they first met with Wilson. They then met an apt. manager who unlocked the door to Petitioner's apartment. He claimed Petitioner invited them in, agreed to speak with them, and they asked if there were any weapons in the apartment: "for officers' safety." Petitioner allegedly responded there "could be", but if there were, they did not belong to her. She allegedly pointed to the general area of a mattress on the floor, saying there could be a weapon "right there." They found a handgun, and arrested her (Mot, 8-16, 24-26, 30). Jones then changed his story and said the P.O.'s did not speak to Petitioner about weapons when they first arrived, but only after she was allowed to get dressed. Jones then admitted he did not remember where they found the gun. (Mot, 21-32). Latham attests Jones' story is false (App. I, ¶¶ 72-86).

4. <u>Additional Harassment by Wilson After Arrest of Ms. Latham</u>

After her arrest, Wilson's harassment of Petitioner continued. On November 27, 2002 Ms. Latham and Berry attended her preliminary examination in 36th District Court. In the hallway before court began, Wilson and some friends made loud, crude profane remarks at them. Petitioner asked Berry to leave, because he was getting angry. She called a

good friend, Aprel Roby, to come be with her in Court, which she did (App. I, ¶¶ 89-90; App. J¶¶ 43-44; App. K, ¶¶10-11).

Petitioner waived the exam. When the court addressed bond, Wilson falsely claimed Ms. Latham and Berry were frightening her by watching her, threatening her and harassing her everyday (PE, 5-8). The Judge believed these untrue allegations, and ordered Petitioner to have no contact with Wilson, but did not order Wilson to have no contact with her. (PE, 11-12; App. I, ¶¶ 91-93).

When court adjourned, Petitioner, Ms. Roby and a man in a suit stepped into an elevator together (App. I, ¶ 93; App. K. ¶¶ 11-12). Just moments after Wilson told the Judge she was terrified of Petitioner, she ran up with three friends, grabbed open the elevator doors, got in and began making more crude, profane and nasty remarks; this harassment continued into the first floor lobby. The man in the suit was Detroit Police Inv. Kenneth Emerson; who provided an affidavit and was available to testify at trial. (App. I, ¶¶ 96-102; App. K, ¶¶ 8-15; App. M, ¶¶ 7-15).

On December 4, 2002, Ms. Latham requested a Personal Protection Order ("PPO") against Wilson, and a judge signed it. Thinking the PPO shielded her from violating the District Judge's order, Ms. Roby drove Petitioner to Tony's apartment to pack her things. Wilson called the police and falsely reported Roby and Petitioner harassed them when they arrived at the apt. Petitioner told the officers she had not harassed Wilson, and explained that Wilson made up lies about her, stalked her and wanted to hurt her. After checking their identifications and the PPO, the officers told Ms. Latham and Ms. Roby to leave (App. I, ¶¶ 103-107; App. K, ¶¶ 16-21).

5. Trial Counsel and Trial Proceedings

Gagniuk represented Petitioner at the suppression hearing, but did not allow her to testify she did not consent to the search of her apartment (App. I, ¶ 108). Ms. Latham and Berry met with Gagniuk, explained the history of Wilson's harassment; explained Latham was innocent; identified all the witnesses, including themselves and Adams (App. L), Roby (App. K), and P.O. Emerson (App. M); described the incident at 36th District Court; gave him photos of the apartment complex. Gagniuk claimed he would present Ms. Latham's defense, but did not (App. I, ¶¶ 112-125).

Gagniuk agreed to investigate the case and interview witnesses. But, he did none of these things; he did not discuss character witnesses; and he never explained Petitioner's constitutional rights to her (App. I, ¶¶ 4-14, 60, 69, 112-125; App. J, ¶45-51, 54-62). Ms. Latham told Gagniuk she wanted to testify, and she wanted Berry and all her witnesses to testify (App. I, ¶¶ 4-14 112-125). Gagniuk never followed up; he did not contact even one witness. (App. I, ¶¶ 4, 14, 112-125; App. J, ¶¶ 54-62; App. K, ¶23; App. L, ¶ 16; App. L, ¶ 22; App. N, ¶ 17; App. O ,¶ 15). Gagniuk did not prepare Ms. Latham or Mr. Berry for their testimony, and surprised them both during trial by not calling them (App. I, ¶¶ 113-117; App. J, ¶¶ 64-65).

During voir dire, Gagniuk asked what the jurors would think if Ms. Latham did not testify. Jurors Two and Six said they very much wanted to hear Ms. Latham's testimony (T. I, 38-40). Trial counsel accepted the jury with Jurors Two and Six still on it. (T, I, 62; App. I, ¶ 118). In his opening, Gagniuk told the jury about the prosecutor's case. He the said the trial *was going to be a credibility contest*, but he did not summarize the defense evidence or witnesses. (T, I, 77-79).

He subsequently rested the defense case without calling any witnesses, including Petitioner (T, III, 3).

Wilson's testimony was internally inconsistent, and illogical. (T, II, 9, 17). Gagniuk did nothing to challenge these fictions, although Ms. Latham kept writing notes to him about what to ask (App. I, ¶ 119). Wilson revised her story about the earlier altercations (T, II, 17-18; App. J, ¶ 22). Wilson first said when Sterling saw Petitioner with a gun he snatched her back into their apartment (T, II, 9-10). Then, she realized she should not say that, because she would not have been on the porch to allegedly see Petitioner lean out the apt. window with the gun (T, II, 10, 19-21).

Wilson's boyfriend, Sterling, testified; his testimony was confusing and did not really corroborate Wilson. He did not go outside to talk to the police (T, II, 36-45).

Osborne Walker, another tenant, testified favorably to Ms. Latham. He saw Wilson and Petitioner arguing, one downstairs on her back porch, and the other in her upstairs window. He said Ms. Latham did have something in her hand, but he could not see what it was; he agreed it might have been a cell phone. (T, II, 28-35).

P.O. Roman testified that Ms. Latham answered the apt. door wrapped in a towel, and, when asked if there was a weapon in the apt., allegedly said there might be one near the mattress on the living room floor, but, if there was a weapon there, she had nothing to do with it. Roman looked and found a handgun (T, II, 46-58). Roman said she preserved the gun for fingerprinting, but the gun was never tested for fingerprints (T, II, 50, 52). Gagniuk asked the Court to keep the proofs open until the following day (T, II, 83-84). Gagniuk did not speak to Ms. Latham to either convince her

to waive her right to testify or to prepare her to testify (App. I, ¶ 120-121). The next morning, Gagniuk rested Petitioner's case (T, III, 3). She was afraid to speak up in protest (App. I, ¶ 122-123). The jury convicted Ms. Latham as charged.

REASON FOR GRANTING THE WRIT

I. THE MICHIGAN COURTS FAILED TO APPLY THE LEGAL STANDARDS ESTABLISHED BY THIS COURT TO EVALUATE PETITIONER'S REQUEST FOR AN EVIDENTIARY HEARING TO PROVIDE RECORD SUPPORT FOR HER CLAIM SHE WAS DEPRIVED OF HER RIGHT TO APPEAL BY THE INEFFECTIVE REPRESENTATION OF HER FIRST APPELLATE ATTORNEY, WHO FAILED TO PROPERLY REQUEST AN EVIDENTIARY HEARING IN SUPPORT OF PETITIONER'S CLAIM SHE WAS DEPRIVED OF A REASONABLE PROBABILITY OF ACQUITTAL BY THE INEFFECTIVE REPRESENTATION OF HER TRIAL COUNSEL, WHO FAILED TO PRESENT PETITIONER'S DEFENSE AND REFUSED TO PERMIT HER TO TESTIFY; WHERE A PROPERLY SUPPORTED REQUEST FOR SUCH AN EVIDENTIARY HEARING WAS FIRST PRESENTED TO THE STATE APPELLATE COURT ON MOTION FOR RECONSIDERATION, AND SUBSEQUENTLY DENIED BY THE STATE COURTS AT EVERY LEVEL, IN VIOLATION OF U.S. CONST, AMS. V, VI AND XIV.

Petitioner Natasha Latham had a due process right to the effective assistance of appellate counsel on her first appeal of right. *Evitts v. Lucey*, 489 U.S. 387, 391-92, 397 (1985); U.S Const, Ams. V, VI, XIV. Her rights to due process of

law and to the effective assistance of counsel were violated when she was effectively deprived of her right to appeal under Michigan law by the failure of her first appellate counsel to properly perfect her appeal. *Roe v. Flores-Ortega,* 528 U.S. 470 (2000).

There are two dimensions to the role of effective appellate counsel. One is the ability to obtain a favorable decision by making the adversary system work. For this role, the expert professional's assistance is necessary in a legal system governed by complex rules and procedures before the defendant can even obtain a decision at all, much less a favorable decision. *Evitts supra;* Griffin, *The Right To Effective Assistance of Appellate Counsel*, 97 W. Va. L. Rev. 1 (1994). Appellate counsel must therefore be familiar with all the rules for protecting the right to appeal, the rules of procedure for filing the notice of appeal, for ordering transcripts, and obtaining the record. Then counsel must spot the appellate issues by reviewing the record, determine what issues to raise, decide how to formulate the issues, and find persuasive authority. *Id.*, at 37. Petitioner also had a right to the effective assistance of trial counsel. The essence of a claim of ineffective-assistance of trial counsel is that trial counsel's unprofessional errors so upset the adversarial balance between defense and prosecution that the trial was unfair and the verdict suspect. *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *United States v. Cronic*, 466 U.S. 648, 655-657 (1984); U.S. Const., Ams. VI, XIV. Here, trial counsel's representation fell below an objective standard of reasonableness, and there exists a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland, supra,* at 688-689; 694.

Here, the evidence and witnesses which could have been presented at trial, but which were not, are summarized *supra,* and in the attached Affidavits, which were presented to the Michigan Courts in support of Petitioner's request for an evidentiary hearing (Apps. I-P). The challenged actions and inactions of trial counsel here could not have been sound trial strategy. Trial counsel, among other things: failed to present Petitioner's defense, where she had a defense of arguable merit; failed to investigate her defense; failed to prepare for trial; waived her right to testify without her consent; failed to properly advise her; waived her right to present a defense and call witnesses in her favor; and kept two jurors on the jury who expected Petitioner to testify, and then rested without presenting her testimony. He then effectively presented no defense. Ms. Latham's trial was a miscarriage of justice, particularly because she had given trial counsel all the information he would ever need to give her a compelling defense that would have made a difference in the outcome of her trial.

Petitioner had a due process right to testify in her own behalf. U.S. Const. Ams. VI, XIV. The decision as to whether to testify belonged to her, not to counsel. *Rock v. Arkansas,* 483 U.S. 44 (1987); *Faretta v. California*, 422 U.S. 806 (1975). A defense counsel's failure to take the proper and evident steps to protect his client's constitutional rights during a criminal prosecution constitutes ineffective assistance, and/or denies the defendant a fair trial. *Kimmelman v. Morrison,* 477 U.S. 635 (1986).

Petitioner's first appellate counsel identified she did not receive effective assistance of trial counsel in that trial counsel improperly rested her case without permitting her to testify or to present her evidence in defense; in a case in which she had a defense of strong arguable merit. But first appellate counsel

failed to file a motion in the trial court for an evidentiary hearing to create an evidentiary record concerning what Petitioner's testimony and her witnesses' would have been, and to show that trial counsel's failure to present a defense or call Petitioner to the stand could not possibly have been strategic; and failed to file a timely motion in the Court of Appeals to remand for such a hearing. This type of evidentiary hearing has been well-established in Michigan criminal procedure since the case of *People v. Ginther*, 390 Mich. 436, 212 N.W.2d 922 (1973).

Petitioner's first appellate counsel recognized that trial counsel failed to properly represent her; but failed to follow the procedures necessary to perfect the issue. Petitioner's first appellate counsel sought to raise issues in the Brief on Appeal filed in the Michigan Court of Appeals, primarily ineffectiveness of trial counsel, which necessitated expansion of the record, but completely failed to follow the proper procedures to expand the record. First appellate counsel failed to obtain the complete record; failed to investigate the case; failed to obtain proper offers of proof regarding testimony and evidence which should have been presented by trial counsel and was not; and failed to properly request an evidentiary hearing in the trial court, in accordance with Michigan procedural rules, to properly expand the record.

Where, as here, ineffectiveness of appellate counsel arises out of counsel's failure to perfect a defendant's access to an appeal of right, this Court has employed *Strickland's* "reasonable competence" standard, but has not required a showing or prejudice, because the failure to perform the duties required to perfect an appeal cannot be a strategic decision. *Griffin, supra,* at 41-42. Prejudice is presumed; denial of an appeal of right justifies *a finding of prejudice per se*. The remedy for deprivation of access to appeal is simple

and efficient: Petitioner should have been permitted to raise the issues which were forfeited in the brief filed by first appellate counsel in the Michigan Court of Appeals during the direct appeal through subsequent post-conviction procedures. *Roe v. Flores-Ortega*, 528 U.S. 470 (2000).

Yet the Michigan Courts at every level refused to permit Petitioner to have an evidentiary hearing to establish record support for her claim she was effectively deprived of her right to appeal by the failure to her first appellate counsel to investigate the case and provide offers of proof in support of Petitioner's claim she was deprived of a fair trial by the deficient representation of trial counsel.

As discussed *supra,* once Petitioner replaced her first appellate counsel, her subsequent appellate counsel worked diligently to obtain and then present Petitioner's Affidavits and Offers of Proof at every level of the Michigan courts, in support of her request for an evidentiary hearing. They were presented in her direct appeal to the state court of appeals on Motion for Reconsideration, and to the state supreme court; and they were presented on subsequent review to the trial court, the state court of appeals, and the state supreme court. At every turn Petitioner has requested an evidentiary hearing to establish that the performance of both her trial counsel and her first appellate counsel was deficient, that the deficient performances prejudiced her, and that no claim of "trial strategy" could possible justify the manner in which trial counsel mishandled her case. The failure of the Michigan Courts to afford Petitioner an evidentiary hearing has made it impossible for Petitioner to even present her claims of violation of her right to due process and her right to counsel to the Courts for review. U.S. Const. Ams. V, VI, XIV.

Trial counsel completely failed to investigate Petitioner's case, or to interview and subpoena her witnesses. First appellate counsel completely failed to create a factual record to document Petitioner's claims of ineffective assistance of trial counsel by providing Affidavits or Offers of Proof. No evidentiary hearing was ever properly requested, or held. Once subsequent appellate counsel provided the appropriate Offers of Proof and Affidavits in support of a request for an evidentiary hearing, the state courts simply ignored them, thereby ignoring the legal standards established by this Court for review of such claims. Without an evidentiary hearing, the Courts below could not consider the real merits of the issues presented in Petitioner's direct appeal. Subsequent counsel subsequently provided offers of proof which made it clear a factual record is required, justified, and needs to be made here because it will establish that trial counsel provided ineffective representation.

CONCLUSION

For the foregoing reasons, Petitioner Natasha Latham respectfully requests this Court to grant his request for a Petition for a Writ of Certiorari, determine that the Michigan Supreme Court erred in upholding the refusal of the lower Michigan Courts to order an evidentiary hearing on the issue of ineffective assistance of both trial and first appellate counsel, and rule that Petitioner was improperly denied the opportunity to establish her claims at such a hearing, and remand this case to the Michigan Courts for further consistent proceedings, or grant other appropriate relief.

Respectfully submitted,

JOHN F. ROYAL
Counsel of Record
615 Griswold Street
Suite 1724
Detroit, MI 48226
(313) 962-3738

Counsel for Petitioner

APPENDIX A

MICHIGAN SUPREME COURT

No. 131998

[Filed February 27, 2007]

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v.

NATASHA LATHAM,
Defendant-Appellant.

ORDER

On order of the Court, the motion for reconsideration of this Court's November 29, 2006 order is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 27, 2007 /s/
Clerk

APPENDIX B

MICHIGAN SUPREME COURT

No. 131998

[Filed November 29, 2006]

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v.

NATASHA LATHAM,
Defendant-Appellant.

ORDER

On order of the Court, the application for leave to appeal the July 10, 2006 order of the Court of Appeals is considered, and it is DENIED, because the defendant has failed to meet the burden of establishing entitlement to relief under MCR 6.508(D).

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 29, 2006 /s/
Clerk

APPENDIX C

COURT OF APPEALS, STATE OF MICHIGAN

Docket No. 267303

[Filed July 10, 2006]

People of MI	)
	)
v.	)
	)
Natasha Latham	)
	)

Michael J. Talbot, Presiding Judge, E. Thomas Fitzgerald, Michael R. Smolenski, Judges

ORDER

The Court orders that the delayed application for leave to appeal is DENIED for failure to meet the burden of establishing entitlement to relief under MCR 6.508(D)

/s/
Presiding Judge

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUL 10 2006 /s/

Date Chief Clerk

APPENDIX D

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT COURT

Case No. 02-14475

[Filed November 4, 2005]

THE PEOPLE OF THE STATE OF MICHIGAN)
)
vs.)
)
NATASHA LATHAM,)
Defendant.)
)

ORDER DENYING/GRANTING MOTION

At a Session of Said Court held in
The Frank Murphy Hall of Justice
at Detroit in Wayne County on NOV 04 2005

PRESENT Honorable Prentis Edwards
Judge

A Motion for Relief from Judgment having been filed; and the People having filed an answer in opposition; and the court having reviewed the briefs and records in the cause and being fully advised in the premises;

IT IS ORDERED THAT the Motion for Same as above be and is hereby [√] denied [ ] granted.

/s/

Judge

13114

APPENDIX E

MICHIGAN SUPREME COURT

No. 128145

[Filed August 30, 2005]

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v.

NATASHA LANAI LATHAM,
Defendant-Appellant.

ORDER

On order of the Court, the application for leave to appeal the November 16, 2004 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

August 30, 2005 /s/
Clerk

APPENDIX F

COURT OF APPEALS
STATE OF MICHIGAN

Docket No. 248950

[Filed January 7, 2005]

PEOPLE OF MI	)
	)
v.	)
	)
NATASHA LATHAM	)
	)

Christopher M. Murray, Presiding Judge, David H. Sawyer, Michael R. Smolenski, Judges

ORDER

The Court orders that the motion for reconsideration is DENIED.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 07 2005	/s/
Date	Chief Clerk

APPENDIX G

STATE OF MICHIGAN
COURT OF APPEALS

No. 248950

[Filed November 16, 2004]

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

NATASHA LANAI LATHAM,
Defendant-Appellant.

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right from her convictions of possession of a firearm during the commission of a felony, MCL 750.227b, and felonious assault, MCL 750.82, for which the trial court sentenced her respectively to serve two years' imprisonment consecutive to and followed by one year's probation. We affirm.

Defendant was charged in connection with allegations that she, in the course of an argument between her boyfriend and the complaining witness, pointed a gun at the complainant and

threatened to kill her. On appeal, she argues that defense counsel frustrated her desire to testify in her own behalf, that the prosecutor improperly commented on defendant's silence, and that defense counsel was ineffective.

I. Whether to Testify

The decision whether to testify is ultimately the defendant's to make personally, and counsel must respect that decision. *See Rock v Arkansas*, 483 U.S. 44, 52; 107 S. Ct. 2704; 97 L. Ed. 2d 37 (1987). Accordingly, if the accused expresses the desire to testify, the trial court must permit him or her to do so, even if defense counsel objects. *People v Simmons*, 140 Mich. App. 681, 685; 364 N.W.2d 783 (1985). However, no formal proceeding is required to waive the right to testify. *See id.* at 684. Instead, if the defendant "acquiesces in his attorney's decision that he not testify, the right will be deemed waived." *Id.* at 685 (internal quotation marks and citation omitted). Given the absence of any indication on the record that defendant wished to exercise her right to testify, defendant waived that right.

II. Prosecutorial Misconduct

Defendant complains that the prosecutor improperly made use of her decision not to testify. *See People v Davis*, 199 Mich. App. 502, 517; 503 N.W.2d 457 (1993), citing MCL 600.2159. Defendant argues that only she could have provided evidence to contradict the prosecutor's witnesses, and thus that commenting on the lack of such contradiction was effectively commenting on defendant's silence. However, neither of the complained of remarks drew any defense objections. A defendant pressing an unpreserved claim of error must show a plain error that affected substantial rights. The reviewing court should reverse only when the defendant

is actually innocent or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *People v Carines*, 460 Mich. 750, 763; 597 N.W.2d 130 (1999).

Commentary to the effect that the prosecution's evidence went unrebutted can act as a reminder that the defendant chose not to testify and should be reviewed in context to determine whether the comments were "manifestly intended to be...of such a character that the jury necessarily took them to be a comment on the failure of defendant to testify." *People v Guenther*, 188 Mich. App. 174, 179; 469 N.W.2d 59 (1991). Our review of the entire argument reveals that the prosecutor's remarks about certain evidence being uncontroverted did not at all focus attention on defendant's silence. Instead, the argument emphasized the strength of the prosecution's case, not any weakness on the part of the defense.

Moreover, the trial court instructed the jury to decide the case solely on the evidence, that the statements of counsel were not evidence, and, most importantly for present purposes, that defendant had no obligation to prove anything and thus that her silence in court could not be used against her. "It is well established that jurors are presumed to follow their instructions." *People v Graves*, 458 Mich. 476, 486; 581 N.W.2d 229 (1998). For these reasons, defendant's claim of prosecutorial misconduct must fail.

III. Assistance of Counsel

Defendant also casts her arguments in terms of ineffective assistance of counsel. "In reviewing a defendant's claim of ineffective assistance of counsel, the reviewing court is to determine (1) whether counsel's performance was objectively unreasonable and (2) whether the defendant was prejudiced by

counsel's defective performance." *People v Rockey*, 237 Mich. App. 74, 76; 601 N.W.2d 887 (1999). Because defendant did not move for a new trial or a *Ginther*[1] hearing below, this Court's review is limited to mistakes apparent on the record. *People v Hurst*, 205 Mich. App. 634, 641; 517 N.W.2d 858 (1994).

A defendant pressing a claim of ineffective assistance of counsel must overcome a strong presumption that counsel's tactics were matters of sound trial strategy. *Id.* Counsel's decisions concerning the choice of witnesses or theories to present are presumed to be sound strategic decisions. *People v Julian*, 171 Mich. App. 153, 158-159; 429 N.W.2d 615 (1988). To overcome that presumption, a defendant must show that counsel's failure to prepare for trial resulted in counsel's remaining ignorant of substantially beneficial evidence that accordingly did not get presented. *People v Caballero*, 184 Mich. App. 636, 640, 642; 459 N.W.2d 80 (1990).

Defendant first asserts that counsel was ineffective in failing to call her to testify. This Court will not assess counsel's competence with the benefit of hindsight. *People v Barnett*, 163 Mich. App. 331, 338; 414 N.W.2d 378 (1987). Defendant points out that she could have testified that she was carrying a cellular telephone instead of a firearm, and that the jury would then have been able "to assess her testimony and demeanor," but fails to acknowledge that she would then have been subject to the prosecutor's cross-examination, let alone explain why this Court should presume that her attorney's direct examination would have been more beneficial to her than the prosecutor's cross-examination would have been

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[1] *People v Ginther*, 390 Mich. 436, 443; 212 N.W.2d 922 (1973).

detrimental. Defendant fails to overcome the presumption that defense counsel's decision against her testifying was not sound trial strategy.

Defendant additionally argues that defense counsel's failure to object to the parts of the prosecutor's closing argument discussed above constituted ineffective assistance. However, the prosecutor's comments were not improper. "Counsel is not obligated to make futile objections." *People v Meadows*, 175 Mich. App. 355, 362; 437 N.W.2d 405 (1989).

Defendant further argues defense counsel failed to call witnesses whose names had been brought to his attention, to object to prejudicial testimony, to impeach the complainant with a prior inconsistent statement, and that he asked irrelevant or improper questions. Defendant has failed to provide support for the majority of these claims. "A party may not merely state a position and then leave it to this Court to discover and rationalize the basis for the claim." *People v Mackle*, 241 Mich. App. 583, 604 n 4; 617 N.W.2d 339 (2000).

Last in defendant's litany of alleged attorney errors is the assertion that defense counsel stated that there was no definition of "reasonable doubt." During closing argument, defense counsel admonished the jury to find defendant not guilty if they were left with some doubt about the prosecutor's case. Counsel was obviously hoping to persuade the jurors to give sway to any doubts that they might harbor regarding defendant's guilt; the remarks could hardly have caused the jurors to become less mindful of their duty to find defendant not guilty if they held reasonable doubts over any of the elements of the crimes.

Moreover, the trial court instructed the jury on reasonable doubt and instructed the jurors that they must apply the law as given by the court, and that such information coming from the court must trump anything contrary coming from the attorneys. For these reasons, we must reject defendant's claim of ineffective assistance of counsel.

IV. Cumulative Error

Defendant finally argues that if no single claim of error itself warrants reversal, such relief is required in the face of the cumulative effect of all such errors. *See People v Cooper*, 236 Mich. App. 643, 659-660; 601 N.W.2d 409 (1999). However, where defendant has failed to show any error at all, there was no accumulation of error of which to make issue. *People v Daoust*, 228 Mich. App. 1, 16; 577 N.W.2d 179 (1998).

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Michael R. Smolenski

APPENDIX H

STATE OF MICHIGAN
COUNTY OF WAYNE
THIRD JUDICIAL CIRCUIT COURT

CASE NO. 02014475-01

THE PEOPLE OF THE STATE OF MICHIGAN)
)
vs.)
)
LATHAM, NATASHA, LANAI,)
Defendant)

ORDER OF CONVICTION AND SENTENCE

1. At a session of the court on 3/31/2003 before the Hon. **EDWARDS, PRENTIS** a Judge of the court, the defendant was convicted by: ☒ Jury ☐ Court ☐ Plea of the offenses(s) PACC code(s)

75082	**FEL ASSAULT**
750227B-A	**FELONY FIREARM**

2. The defendant was in court for sentence on 4/21/2003 and was sentenced by the court to:

   ☒ Probation, for a term of 1 years. (see separate probation order)

☒ Michigan Department of Corrections, confined for a term of not less than nor more than ct 2: 2 yrs mandatory years.

The maximum statutory penalty for the crime(s) of which said defendant stands convicted is _____ years.

☐ Jail confinement for _____ days/months.

☐ The conviction is reportable to the Secretary of State under MCL257.732 or 281.1040.

The defendant's drivers license number is _____

RECOMMENDATION Rev. Date 8-11-03
Ct 1 Consecutive to Ct 2

The defendant was represented by ATTORNEY Delphia Burton BAR NO 047688 and is to be given credit for 2 days served in JAIL. as to ct2

SAID CREDIT TO BE APPLIED TO MINIMUM AND MAXIMUM SENTENCE.

/s/Prentis Edwards
Judge

APPENDIX I

STATE OF MICHIGAN
IN THE COURT OF APPEALS

Court of Appeals No. 248950
Lower Court No. 02-014475

[Dated November 10, 2004]

PEOPLE OF THE STATE MICHIGAN,
Plaintiff Appellee

vs

NATASHA LATHAM,
Defendant-Appellant.

STATE OF MICHIGAN)
)ss.
COUNTY OF WAYNE)

AFFIDAVIT OF NATASHA LATHAM

NATASHA LATHAM, being duly sworn, states:

1. I am competent to testify to all matters stated in this affidavit, and as to any other matters within my knowledge, information, and belief, except where this affidavit indicates I have been told something by someone else, and, as to those matters, I believe them to be true.

2. I am the defendant-appellant in this case.

3. I was convicted of felonious assault and felony firearm on March 31, 2003 in Wayne County Circuit Court after a jury trial. I have never before in my life been convicted of any crime.

4. Although a jury convicted me, I am innocent of these charges. I prepared an extensive defense with my lawyer. He abandoned my defense without telling me that he planned to do so.

5. I told my trial attorney Brian Gagniuk ("Mr. Gagniuk") everything about my defense. I gave him so much information he was left with very little to do to prepare my case for trial. We had three meetings, and my boyfriend Duane Berry was present for each. Mr. Gagniuk heard the details about my defense, and he agreed that the jury would need to hear it. First and foremost, I knew that Duane and I would both have to testify. We both made it clear to Mr. Gagniuk that we intended to testify at trial.

6. I gave Mr. Gagniuk extensive information about other witnesses and evidence that would establish my defense. I gave him the names, addresses and other ways to locate my witnesses. I told him how to get to the scene, and he agreed to take photographs and interview neighbors and other witnesses I told him about.

7. Although I explained to Mr. Gagniuk that I have never been in a fight in my adult life, that I have never touched or held a gun, that I do not engage in violence to settle disputes, and that I have no criminal record whatsoever, he never asked me if there were any "character witnesses" I could name for

him who could testify about my character for non-violence, and for being a "non-assaultive" person.

8. Although Mr. Gagniuk promised to interview my witnesses and go to the scene of the incident, he did not conduct any investigation into my case. Therefore, I went out to the scene, talked to some individuals, took pictures, and wrote notes for Mr. Gagniuk as to what each depicted.

9. I also gave Mr. Gagniuk extensive and detailed notes about all the things that transpired that led to my arrest for these false charges.

10. I literally provided Mr. Gagniuk with a roadmap he could follow to put my case before the jury. He agreed he would do this, and I had no reason to doubt him.

11. Mr. Gagniuk told me he was going to "prep" me to take the witness stand, but he never did so. I assumed he would do this before I took the stand.

12. Upon information and belief, Brian never met with any of my witnesses, he never interviewed any of them, he did not subpoena them, and he did not discuss with me his failure to do so. My witnesses were not prepared to testify, and were not told that their presence was needed in court.

13. One or two days before trial, Brian gave me what he felt was his most important advice: Brian instructed me to dress "like every man's dream girl" during the trial. He told me to look as provocative and sexually attractive as possible. I thought this advice was strange and I just dressed in normal clothing during the trial.

14. On the last day of trial, when I thought I would be testifying, all of a sudden, without ever discussing it with me, Brian rested the defense case. I was flabbergasted. The jury did not hear my side of the incident(s) at all, and could not consider my strong defense.

15. Now, I am convicted of felonious assault and felony firearm, neither of which I committed. If my appeal is unsuccessful I will have to spend two years in a Michigan prison for crimes that I did not commit.

16. The so called crimes that I was charged with were the result of a false police report made by Michelle Wilson, a woman who lived in an apartment building next to the apartment building where my brother, Tony Griswold, had leased an apartment within the Evergreen Estates Apartment Complex in Detroit. Wilson had become obsessed with hatred and jealousy towards my boyfriend Duane Berry, and me for months before my arrest. For some unexplained reason, she relentlessly watched our comings and goings from this apartment complex, she eventually became extremely hostile, she began to start trouble, and she tried to provoke fights with us.

17. After several incidents of irrational harassment from Wilson, she called the police on November 13, 2002, and made a false police report about me. From the police reports, I learned that she told police that I pointed a gun at her while she was involved in a verbal argument with my boyfriend, Duane Berry, that morning. She made a police statement in which she said that I "hung" out a window waiving a handgun around, and that I also threatened to kill her. Wilson's police report was 100% false.

18. I did not point a gun at Michelle Wilson at any time in my life, and I did not point a gun at her when she and my boyfriend were having a verbal argument on November 13, 2002.

19. The felonies Wilson made up about me allegedly took place at the Evergreen Estates Apartment Complex, located at 19267 Voltrobeck Drive in Detroit, outside the apartment building in which Tony Griswold had leased an apartment.

20. I had been staying at my brother Tony Griswold's apartment most nights during the week since May 2002. Tony was busy going to school in Pontiac and taking care of his new baby, so he was not staying overnight at his apartment very often. He was also out of town for several weeks during the summer of 2002. His apartment had been broken into, and he wanted it to be occupied. He asked me to stay overnight there as often as I wanted, so his apartment would appear to be "lived in".

21. It was a good arrangement for me to stay overnight at the Tony's apartment, because it was close to the beauty salon where I worked at that time.

22. On most nights that I stayed at Tony's apartment, my boyfriend, Duane Berry, also stayed overnight with me.

23. When I started staying overnight at Tony's apartment in May of 2002, I had never heard of or met Michelle Wilson in my entire life.

24. After I started staying there frequently, it slowly became apparent that Michelle Wilson ("Wilson") was watching me from her apartment in the apartment building

located adjacent to my brother's building. She made it her business to watch and see who was coming and going to my brother's apartment while I was there. At first, I did not even know she was doing it.

25. Sometime in May or June of 2002, Tony Griswold was walking up to the door outside the building when Wilson approached him and asked if he lived in the building. He told her he did. She "informed" him that "his girlfriend" was having "all kinds of guys" over. Tony told her that I was his sister, not his girlfriend, and he walked into the building.

26. When Tony got upstairs to the apartment, he said to me, "[O]ooh, somebody hatin' on you!". He told me this woman who lived in the adjacent building thought I was "his girlfriend" and that I was having all kinds of guys coming over. She was acting like I was cheating on my boyfriend. Tony informed her that I was his sister.

27. I asked Tony if he knew the woman, but he said no. Tony told me that all he knew about her was that she had two kids and drove a red Sunfire. I wondered how she knew what apartment I would enter, and how she knew who visited me. I assumed she was nosy or jealous, and I just brushed it off and forgot about her.

28. I learned from my boyfriend, Duane Berry, that this same woman, Wilson, had appeared at her apartment window dressed only in her underwear, and stared intently at him as he entered our apartment building. Duane began to tell me that Wilson was frequently watching him as he entered and left the building. I personally did not notice Wilson much during the summer months of 2002 because I was working long hours and was out of town for a while. Therefore, I still

did not know that the woman who drove the red Sunfire was named: Michelle Wilson.

29. Sometime in the fall of 2002, my brother received a letter from Evergreen Estates Management dated October 17, 2002. Karen McClure of the leasing office signed it. This letter stated that an unidentified person had brought it to the attention of the management that someone was living in Tony's apartment who was not on the lease. The letter also stated that a car driven by someone who was frequently visiting the apartment was often parking on the grass or on a concrete slab in the parking lot, and that this is against the rules. The letter warned Tony that he was in violation of his lease and that this was grounds for eviction.

30. It was apparent to me from the contents of the letter that it must have been Wilson who had made these complaints to management; she was the only person I knew of who watched Tony's apartment closely to see who was coming and going, and where they park their cars. She also must have been keeping track of where Duane parked his car when he visited me at the apartment.

31. After Tony got the letter from management, Wilson started harassing Duane and me in a much more direct and hostile way.

32. Wilson instigated three events on November 10, 2002. She wanted to provoke me to come outside and fight with her, but I do not fight with anyone.

33. Duane came to pick me up on November 10, 2002 because we had to run some errands. He parked his car on a concrete slab located between the back of Tony's apartment building and the parking lot. When the lot is full, which it

often is, tenants routinely park their cars on the grass, or on this concrete slab. I have never heard of any other tenant ever getting ticketed for this, or contacted by the apartment management. This particular concrete slab is a common place where tenants park. Duane came in the apartment to get me, and was there for several minutes.

34. Duane and I then left the apartment, and went outside to leave. I saw that while Duane was in the apartment, Wilson had pulled up and parked her car on the grass, intentionally positioning it so that it blocked Duane's car so he could not pull out the way he had driven in. The only way he could get out was to drive over a curb into the parking lot, which risked damaging the bottom of his car, which is very low-slung. There was no one around Wilson's car when we first came out.

35. Then, Wilson came out of the back door of her apartment building. She walked to her car and retrieved some packages or bags from it. Duane politely asked Wilson to move her car so that we could leave. Wilson responded in a nasty manner that he did not live there, that he was not supposed to park where his car was, and that she would park her car where she wanted to park. While this was going on, I got in Duane's car and stayed there. Wilson and Duane exchanged more loud, profane, and angry words. Eventually I told Duane to just get back in the car and forget about her. She still refused to move her car, so Duane had to drive over the curb, scratching the bottom of his car, which is what he had been trying to avoid.

36. About an hour and a half later on November 10, 2002, Duane and I returned to the apartment building with some movies we rented. I went to the bathroom to wash my face before we started the movies. All of a sudden I heard a

car coming from around the side of the building. I asked Duane what was going on, and he said that Wilson was standing behind his car writing his license plate number down

37. I told Duane to open the window and ask Wilson what she was doing. He opened the window, and asked her what she was doing. Wilson told Duane she was writing his license plate number down "in case she needed it".

38. Duane argued with her. I also went to the window and shouted at her. I asked what she thought she was doing, looking at me, looking at whom I associate with, and watching when we leave and return. I told her to mind her own business, to stop watching us, to get back in her apartment and watch her kids. I told her to get her own life, keep out of mine and mind her own business. However, I never, ever threatened to harm her in any way.

39. Michelle then threatened to have Duane's car towed away or removed. Duane then said to her, "If you touch my car I'll shoot the shit out of you." I never said anything like this; I never threatened violence against Wilson.

40. Wilson appeared unconcerned with Duane's statement. She immediately responded: "You're not the only one with a gun".

41. Then, after Duane had threatened Wilson, and Wilson had responded, she then told *me, not Duane*— to come downstairs and say what I had to say to her face. I then told her I was not coming outside. I was especially not coming outside when she had just claimed she had a gun. I then shut the window and ignored her.

42. Sometime later that same day, Duane and I were inside watching a movie. We heard more commotion outside. We looked out the window. We saw Wilson and two of her friends looking up at my apartment window. One of her friends had a vicious looking Rottweiler dog with her, the other had a baseball bat, and Michelle was there with them. They made gestures and statements to me to come downstairs and fight Wilson.

43. I do not fight with people. I do not have the urge to fight in response to provocation, and I never have. I walk away. So I did not respond. I certainly had no intention of responding to this provocation, especially since Wilson had stated she has a gun.

44. After we looked out the window, Duane and I ignored Wilson and returned to our movie.

45. On November 12, 2002, I was about to take a shower while staying in Tony's apartment. I opened the window to ventilate the apartment. I then saw Wilson talking to Willie, a maintenance man at the complex. She was also talking to Osborne Walker, another resident, who later testified at the trial. I could hear Wilson describing to them her version of what happened on November 10, 2002; and telling them that I do not really "live there." I heard Willie say: "we need to get them out of here." I could also hear Wilson tell Willie that Duane was parking his car on the grass and on the concrete slab. I could hear Willie told Wilson that the next time Duane parked on the concrete or the grass he would put a "no parking" sticker on Duane's car.

46. On the evening of November 12, 2002, Duane arrived late to the apartment, and it was dark. He did not have any "no parking" sticker on his car at that time. He parked

his car on the concrete slab underneath the apartment window where he could keep an eye on it.

47. The next morning, November 13, 2002, Duane and I woke up between 8:00 and 8:30 a.m. Duane was going to go home to take a shower, change clothes and go to work. I was on my way to the bathroom and saw Duane look out the window. I used the bathroom and came out to get my phone to call the salon where I work. I then noticed Duane was not in the apartment anymore. I looked out the apartment window and saw that Duane had put on pants and a shirt, and was outside peeling a green "no parking" sticker off of his car. I turned away from the window and got my cell phone.

48. I started to dial the number for the salon where I worked, to see what time my first appointment would be on that day. As I started to call, I heard a commotion outside, and did not finish dialing. I was still wearing at that time the clothing I had slept in, specifically a mid-riff T-shirt and panties. I went to the apartment window with my cell phone in my hand to see what the commotion was about.

49. I looked out the window, and saw Duane and Michelle Wilson, having a loud argument. I could not hear exactly what they were saying, but I did see that they were both very angry. Duane was walking toward Wilson in a threatening manner. I thought he might be getting ready to hit or assault her.

50. As Duane walked toward Wilson, I opened the window, cell phone in hand, and yelled "*Don't touch her*!"

51. As I stood in the window, it was daylight. It was easy to see me from the outside, and it was easy to see that I was holding an object.

52. As Duane got closer to Michelle Wilson she started hollering for someone named "Sterling" to come outside. I later learned Sterling was Leonard Calhoun, the father of her children. As she yelled for Sterling, she and Duane were about 3 to 4 feet apart, still arguing.

53. While Michelle Wilson yelled for Sterling, she did not back away from Duane. Nothing was blocking her from just going inside her own apartment building. Duane looked menacing, but she did not move. She stood there and continued arguing with him. She did not appear to be afraid.

54. When Sterling came outside, wearing his boxer shorts, Duane looked at him and said: "Dog, you have to check her". Sterling replied, "I ain't checking shit". Duane then walked to the back door of the apartment building.

55. In order to get back inside the building, Duane had to have used a key which is kept in the apartment, to open the steel, security door which leads into the building from the courtyard in the rear. Our apartment only had one key to this door.

56. When Duane came back inside our building, the verbal argument, though heated, was over.

57. Duane came upstairs to the apartment to throw the green sticker, which he had peeled off his car, away. He told me to call the management of the apartment complex to report how Wilson was harassing us; I told him I was already looking for their number so I could call. Duane left the apartment in order to go home and then go to work.

58. I found the manager's phone number on the October 17, 2002 letter that management sent to Tony.

59. I phoned the manager's office and spoke to a woman named "Judy." I explained that I was Tony Griswold's sister, and that I stayed in his apartment often, but not every day. I explained I was watching Tony's apartment because he was busy with school and other matters, and could not stay there every night. His apartment had been broken into previously, and he wanted someone to stay there to keep it occupied.

60. Judy agreed that Tony was not in violation of his lease by having me there to keep his apartment occupied when he was away, because a person had to stay in an apartment for 21 consecutive days to be considered a tenant.

61. As I was on the phone with Judy, Duane called me from his cell phone, and I put Judy on hold. Duane told me that as he walked towards his car, Wilson shouted to him, "Where are you going Matthew? Wait 20 minutes, Matthew!" He then gave Wilson "the finger," got in his car, and drove off. Because of this, Duane figured she called the police about their altercation and wanted him to stay until they arrived, so he would be arrested.

62. We both believed that Wilson had called Duane "Matthew" because he subleased his car from a friend named "Matthew Ducco". Wilson must have found a way to illegally "run a check" on his license plate number.

63. I told Duane that no police had arrived or were in the vicinity.

64. I switched the call back to Judy, and explained to her everything Wilson had been doing to harass us and to provoke us. Judy downplayed the situation. She told me not to get in Wilson's way, to stay away from Wilson and not to

get her upset. Judy did not understand that it was Wilson who would not stay away from me, and who would not stop upsetting me.

65. I called Duane again and told him how Judy just downplayed the incident and disregarded Wilson's behavior in harassing, stalking and provoking angry confrontations.

66. After speaking to Duane, I did not leave the apartment or try to run away, because I did not do anything wrong. Had I really pointed a gun at Wilson, I certainly would not have called the manager to complain and talk about what Wilson was doing. Once I learned that the police had apparently been called, I would have gotten ride of the gun, and left the apartment. There were front and back doors to the apartment, and I could have easily left without being seen. However, in fact, I doubted the police would even respond to a report of an argument. I did not imagine Wilson had told the police that I had pointed a gun at her.

67. Before the trial, I told my trial attorney, Mr. Gagniuk that he should get my Sprint telephone bill because it would show all the calls I made that morning, and that I was on the phone with Judy that morning. However, he never did anything to get it. After the trial, I obtained the Sprint telephone bill myself. My Sprint phone number was (313) xxx-xxxx. I wanted to get the Sprint bill to show I had not committed a crime. Had I committed the crimes I have been convicted of, I would not have stayed in the apartment, and I would not have called the apartment manager.

68. Instead of trying to leave the apartment complex, I got into the shower to get ready to go to work.

69. Wilson later testified at trial that she did not call apartment management at all—she only called the police. She testified she called police and reported that I pointed a gun at her. She said that during the verbal argument she had with Duane, I had run downstairs wearing blue jeans and a white shirt. She claimed I went outside and stood on the back porch holding a gun, and pointed the gun at her; she claimed that when this happened, she was standing on her building's back porch; she also claimed that I was only three feet away from her at this time. Wilson also said I threatened to kill her. I told Mr. Gagniuk during the trial that the two porches were about 40 feet apart, and asked him to use the photographs I had taken and given to him to prove this. He failed to explain to the jury that we would have been much more than three feet apart if we were each standing on our respective back porches.

70. At trial, Wilson also claimed that, after I went back inside the building and up the stairs, that I stopped at a window on the landing of the stairs next to the door to Tony's apartment. She told them I "hung out the window", "waiving" the gun around. When she described this part of her story, she just dropped her story about what Duane was doing. Her police report made it seem like he just vanished.

71. I never would have gone downstairs as described by Wilson, especially after she had informed us in a threatening manner just a few days earlier that she had a gun.

72. After I finished talking to Judy, I began to take my shower. I was not really convinced that Wilson had called the police, or that they would respond to such a minor incident. As the water was running, I heard knocking coming from the hallway. I got out of the shower and peeked out the bathroom

door. I was wet and naked, and was shocked to see two police officers standing inside the apartment.

73. I later learned they were Police Officers Patrick Jones and Patrice Roman. I never gave the police officers permission to enter Tony's apartment, where I was staying. Also, I did not hear them knock on the door, or yell "police" before entering.

74. The police did not knock on the apartment door and then see me peek outside the door, as they testified. They did not hear me give them permission to enter my apartment because I never heard them enter—they barged in.

75. When I saw the police in the apartment, they immediately started yelling at me, telling me not to pretend I was in the shower, and to come out right away. I put on a robe and stepped out of the bathroom. They then asked me "where the gun was." I asked what gun they were talking about.

76. I did not know what the officers were talking about. I absolutely did not point to the area of a mattress or tell them that there "might" be a gun near there. I did not know about any gun in the apartment. The gun the police came up with was not mine, and I never knew where it was located.

77. I told the police officers I did not know of a gun, and if they found one it was not mine. I never let the officers into the apartment to look around, because I was showering when they barged in without my permission. I later learned that the apartment manager, Karen McClure, had unlocked the door and let the officers in the apartment, without my permission.

78. The officers told me Wilson had called them, and said that I pointed a gun at her. I told them they had the wrong idea, and asked to be allowed to explain.

79. I explained to the two officers who had barged into the apartment about Wilson, that I never knew her before I started staying in this apartment, but that she just started harassing and stalking me; that she appeared crazy and obsessed with me, and that she apparently hated me for no reason that I could imagine. I told the officers Wilson had caused trouble, and had tried to provoke me to fight her, which I did not do.

80. I explained to the officers about the verbal argument between Duane and Wilson that morning. I explained that I never went outside, I never pointed a handgun at her, and I never threatened to kill her.

81. I told the officers to go in the bathroom and look at the clothes I took off to get in the shower (the mid-riff T-shirt and panties), and they did. I told them there is no way I would have gone outside dressed like that. I told them I did not change clothes, look for a gun, get a gun, and run downstairs, as Wilson claimed. I have never even touched a gun in my entire life. I told the officers I have nothing to do with guns and I never have. I do not even know how to hold one. If I had a gun I would not know what to do with it. I do not get involved in violent fights, which is why I told Duane not to touch Wilson.

82. As I was explaining all these things, Officer Roman was just rummaging through the apartment, picking up things and dropping them down. I did not know that I had a right to tell her not to do that.

83. Also, I did not feel like I could tell the officers to leave the apartment; additionally, I did not feel I could leave while two officers were there, officers who were carrying their own guns.

84. As luck would have it, Officer Roman found a gun under the mattress in the front room. This mattress is permanently left on the living room floor for people to sit on or lie on while watching TV. I never told the officers there was, or might be, a gun located there because I did not know it was there. I explained to Officer Roman it was not mine, and that I never knew it was there, and that I never touched it or pointed it at anyone. Officer Roman asked me whether, if the gun was tested for fingerprints, whether my prints would be on it. I said "no."

85. The police officers told me to get dressed because I had to go with them and speak to an investigator. They did not seem afraid of me or afraid I was going to grab the gun from them.

86. When the police officers walked me to their car, Officer Roman held up the gun so the neighbors who were watching could see it. However it did not seem like she was holding it in a way to keep any fingerprints on it from being destroyed.

87. I was locked up, and spent two nights in a jail cell before I was arraigned. While I was at the Precinct, I was interviewed by a Detective. I told her about Wilson's history of instigating trouble with Duane, and me but she did not write this information down in my police statement.

88. When I was arraigned, my bond was set at $15,000.00/10%. I was bonded out shortly after the arraignment.

89. After this horrible experience, Wilson still did not stop her lying or her harassment.

90. I went to the preliminary examination with Duane Berry. He and I sat down the hall, away from Wilson and her friends. Nevertheless, Wilson and her friends made loud, rude and obscene remarks in our direction. I could not understand all of it, but I heard Wilson call Duane a "whore-ass nigga;" Duane got angry, so I told him to leave. I then called one of my best friends, Aprel Roby, and asked her to come to court to be with me, and she agreed.

91. I had a female lawyer from the Defender's Office for my preliminary examination at the 36th District Court. She advised me to waive the examination and I did.

92. After I waived the exam, Michelle Wilson was sworn to tell the truth and testify about my bond. She lied about me under oath. She told the judge that she was frightened of me. She claimed that her children, who had been taken to school, and never saw her argue with Duane, were now afraid to go home to their apartment, so they had been staying at her mother's home. She falsely claimed that she had seen Duane and me around Tony's apartment since the arraignment. She made some claim that friends of ours stole her car. None of this was true. I had not been near Tony's apartment since the arraignment, and neither had Duane.

93. The District Court Judge took Wilson's claims seriously. She told me not to go anywhere near Wilson or the apartment. She told me to control Duane from going there

because she would assume that if he went there, he was going on my behalf. The Judge also assumed it was true that I pointed a gun at Wilson. She ordered me and anyone associated with me to stay away from Michelle Wilson.

94. My good friend, Aprel Roby, was in the courtroom, and heard the judge tell me to keep away from Wilson. After court ended, she and I left the courtroom, and went to the elevator area in the hallway. While waiting for the elevator, I spoke to a man wearing a suit.

95. An elevator arrived and Aprel and I stepped inside along with the man in the suit.

96. As the doors to the elevator started to close, Wilson suddenly appeared, and pulled the elevator door open; then she, two friends and her mother squeezed into the elevator with us. She wanted to make it impossible for me to comply with the Judge's order not to go anywhere near her.

97. In the elevator, Michelle Wilson and her two friends started making loud, crude, profane and nasty remarks about me to each other. They were talking as if I was not even in the elevator.

98. I turned and looked away from them. But Aprel Roby started arguing back to Wilson and her friends.

99. Wilson and her friends said things like "she is guilty" and "she is going away for two years", but I did not say anything. They called me a "whore" and a "bitch." They called Aprel a "raggedy bitch."

100. This loud commotion continued off the elevator and into the first floor lobby of 36th District Court. It caught

the attention of the two arresting officers who had come for the Examination. They asked me what was going on, and I told them how Wilson violated the judge's order that I had to stay away from her, and how she had just tried once again to provoke a confrontation with me.

101. The man in the suit walked along with us. He said he was a police officer named Officer Kenneth Emerson. He was nice and understanding. He gave me his business card, and said I could call on him if I ever needed his testimony about what happened in the elevator and the lobby. The two arresting officers walked with us to Aprel Roby's car.

102. I told my trial attorney Brian Gagniuk about Officer Emerson and the harassment in the elevator. He never asked for a hearing about it, and he never mentioned it in Court. He never interviewed or subpoenaed Officer Emerson for trial.

103. After the incident in the elevator, Wilson did not stop her harassment. I decided I should get a Personal Protection Order (PPO) to keep Wilson away from me, because the Judge at the preliminary examination only ordered Duane and me to stay away from her; the Judge did not Order Wilson to stay away from us. On December 4, 2002, I went to court, applied for a Personal Protection Order, and a Judge signed it.

104. Aprel drove me to court that day to get my PPO. Then she drove me to Tony's apartment so I could get my personal belongings out of his apartment. I thought this would not violate the Court's Order because now I had a Court Order as well. I started to pack my things up so I could move out for good. After I had most of my things packed up, Aprel

went outside to start her car and get it ready to be loaded with my belongings.

105. After Aprel left the apartment, I heard noise outside. I looked out and saw several police cars, and a number of police officers, surrounding Aprel.

106. I went downstairs to see what was going on. I came outside and saw Wilson and her two friends who had been with her in Court at the Preliminary Examination, standing over by her apartment building talking to several police officers. Wilson and her friends were loudly saying obscenities to Aprel and me., but the police paid no attention. Instead, the officers told Aprel to stop responding to them. There was a pickup truck backed up to her door. Aprel told me that the police said that Aprel and I had harassed Wilson earlier when we arrived at the apartment. I did not even see her when we arrived, and I certainly did not harass her. I figured that Wilson must have been watching for me, even though I was living in Oak Park. She was looking for me that day as always.

107. The police asked Aprel and me to produce our identification, and asked whether we harassed Wilson earlier that day. I told them no. I also said they could check with any of the neighbors to see whether I did anything improper, because I did not. I told the officers that Wilson was crazy, that she makes things up about me and that she had watched my boyfriend and me constantly. The officers told us to leave, and not to come to the apartment complex again. We left immediately, but I did not have a chance to retrieve my things and take them with us.

108. My trial attorney was Brian Gagniuk. He filed a motion to suppress concerning the way the police entered and

searched the apartment where I was staying. He called me to the witness stand, but only very briefly. He asked me a few questions to show the Judge that I had standing to challenge the search and seizure. However, he never asked me to explain what happened when the police officers barged in my apartment while I was in the shower and obviously did not have a gun. He did not ask me to explain that the officers came in the apartment without my permission and searched the premises. He did not ask me to tell the Judge whether I felt I could leave while the officers were there, or whether I felt I could ask them to leave.

109. Instead, Officer Patrick Jones testified at the evidentiary hearing that I had come to the door of the apartment all wet, and freely allowed the officers into the apartment. Officer Jones falsely said I told him there might be a gun under the mattress in the living room, or in that area, but if there was one, it was not mine. He falsely claimed the gun was within an area where I could reach it, so he had to get the weapon from under the mattress and place it into safekeeping. The officers then arrested me. Officer Jones also falsely stated that before he got the gun, he allowed me to get dressed.

110. After the hearing, I talked to the female officer, Patrice Roman in the hallway of the Frank Murphy Hall of Justice. Duane was with me. I told her that her partner lied on the witness stand while under oath, and she knew it. Officer Roman acknowledged that she knew her partner had lied on the witness stand under oath. But she assured me she would testify truthfully at my trial, and she would set the record straight. Officer Roman also said "this whole thing is b.s., I don't want you to go to jail for this; this is stupid."

111. I immediately told my attorney Mr. Gagniuk about this conversation in detail; he was well aware of what Officer Roman promised. He agreed to call Officer Roman to testify at trial.

112. I prepared Mr. Gagniuk for my trial, as I have described in paragraphs 4-15, among others. I also told him about the confrontations on November 27, 2002 and December 4, 2002. I gave him information about how to contact Officer Emerson, who was willing to testify for me about the incident in the 36th District Court.

113. As I have stated, Mr. Gagniuk's main advice to me to prepare for trial was to look sexy during the trial so that every man would feel I was his "dream girl". He did not go over our testimony with either Duane or me.

114. The morning that trial began, Mr. Gagniuk suddenly told Duane that Duane "could not" testify because he had a previous conviction for uttering and publishing. We explained to Mr. Gagniuk that Duane would tell the jury about it because another person had given him counterfeit money. Duane was a credible witness; he was working for a real estate company now. Nevertheless Brian still said he could not testify.

115. Duane was outside during the entire verbal argument on the day of the incident, and he knew I did not go outside with any gun. His testimony was very important for my defense. In fact, if Duane ever saw me with a gun, he would be so shocked he would drop everything and tell me to put it down.

116. Before the trial, I also found a witness from the apartment building named Virginia ("Tina") Adams. She told

me she looked outside during the argument on the morning of November 13, 2004, and she never saw me go outside at all. She was sure I did not go outside, because if I had, she would have to have been aware of it. Ms. Adams was also sure that I was not outside threatening Wilson or anyone with a gun. I told Mr. Gagniuk about her before the trial, where she lived and what she could testify too. Mr. Gagniuk made no effort to find her or produce her for the trial.

117. I figured Mr. Gagniuk was the lawyer and must know what he was doing. Also, I still assumed he would certainly call me to the witness stand and I would tell the entire story. I depended on Mr. Gagniuk to inform me of my rights. I had never been in trouble before, and didn't know what my rights were in this situation.

118. During jury selection, Mr. Gagniuk and I agreed on some jurors that we wanted to remove. There were others I felt we needed to remove as well, but Mr. Gagniuk told me we could not do it, because it was too late. He left jurors on the panel who said I should testify or they would convict me.

119. When my trial got underway, I did not know why Mr. Gagniuk was not bringing out my defense in his cross-examination of Wilson, Leonard Calhoun or Osborne Walker. I kept writing him notes but he ignored them. He heard Wilson lie about many things on the witness stand, and he did not bring out her lies. He did not show how it would have been impossible for me to do the things she claimed I did because of the timing. He did not explain that, in order to do what Wilson claimed I did, I would have to have put on pants and shoes, gotten a gun, run downstairs in a hurry, opened up a steel security door while holding a gun, and run outside without a key to the security door (because Duane was already outside with the only key). Mr. Gagniuk did not call any of

my witnesses. He did not confront Officer Roman when she broke her promise to me and lied on the stand, telling the same story her partner told.

120. On Thursday, when trial adjourned for the weekend, Mr. Gagniuk asked the Judge if he would be allowed to inform the Court on Monday whether he planned to call any witnesses for the defense, or not. The judge said that this was fine. I assumed he would tell the Judge he would be calling me, at least.

121. Mr. Gagniuk did not call me or speak to me at all over the weekend so we could prepare my testimony. He did not tell me I had a right to testify and that the decision was up to me. Also, he did not tell me that, although we planned all along that I would testify, he had decided by himself not to call me to the stand.

122. On Monday, as trial reconvened, Brian said only that "the defense rests." With that, he gave up my entire defense; I was unable to explain to the jury what this case was really all about. I wanted to tell them I was not guilty; that I never had a gun, or pointed a gun at anyone. I wanted to tell them how I had been targeted and harassed by this vindictive, crazy woman who wanted to lock me up for no reason. Mr. Gagniuk ruined my entire defense, and all of a sudden, my opportunity to present it was gone.

123. I did not stand up and object when Mr. Gagniuk rested my case, because I thought I would be in contempt of Court for interrupting the proceedings and speaking out of turn. I was convinced that if I stood up and spoke, I would be put in jail.

124. I was in shock. I am innocent of these charges of which the jury has convicted me. Michelle Wilson, a woman who is paranoid, jealous and who was bent on destroying my life, concocted these false charges.

125. The prosecutor argued in his closing argument that the jury should convict me because the only evidence was Wilson's claim that I pointed a gun at her, and her testimony was not contradicted. Her testimony was not contradicted because my attorney did not put anyone on the witness stand to contradict her, even though I gave him a mountain of evidence to contradict her with.

126. However, at some point during the trial, the trial prosecutor, Kenneth King, came up to several of my family members and myself and told us he was very troubled about my case. He looked very upset, and he told us that my case was the most troubling case he had ever triad. He had been unable to sleep the night before. He explained that he had talked to his superiors in the prosecutor's office to try to get the case against me dismissed or reduced, but the prosecutor's office would not go along with it.

127. Brian said nothing to me after the jury verdict.

128. I hired a new attorney, Ms. Delphia Burton, to represent me at sentencing and for my appeal. Judge Edwards has let me stay free on bond pending appeal. My appeal is my only hope to avoid going to prison for two years.

129. I gave my new lawyer Delphia Burton all the information about my case that I gave to Mr. Gagniuk. I also obtained a copy of my Sprint telephone bill to show Ms. Burton that I was calling Judy the apartment complex manager when Wilson claimed I was outside with a handgun. I told

Ms. Burton how Mr. Gagniuk did not present my defense to the jury. She assured me she would cover these issues in my appeal.

130. At sentencing, Ms. Burton told the judge she was going to raise the issue of ineffective assistance of counsel, and she would file a motion for new trial if it appeared justified after she had the opportunity to review the transcripts.

131. The judge sentenced me to one-year probation for the felonious assault. He held my felony firearm prison term in abeyance pending outcome of this appeal.

132. I did not know why, but Ms. Burton never filed a motion for new trial or for an evidentiary hearing in the trial court on my behalf. She never asked for a hearing about Mr. Gagniuk's performance as my trial attorney. She never explained to me why she did not do these things. I now understand that these steps were necessary in order to present my position on appeal that I am innocent, and that Mr. Gagniuk failed to present my defense at trial.

133. When I asked Ms. Burton why she did not request a new trial, she said she could ask for hearing in the trial court on remand in my brief on appeal.

134. I did not know it at the time, but I later found out that Ms. Burton did not order all of the transcripts of the trial to prepare for the appeal. She never told me she was going to do this, or explained why.

135. Ms. Burton prepared and filed my brief in the Court of Appeals. She did ask for a remand to the trial court in that brief, but not in a separate motion. Further, she did not

attach any affidavits or evidence, which was not offered during the trial to support my position that Mr. Gagniuk deprived me of my defense.

136. When the prosecution filed its brief, I read it. I then spoke with Ms. Burton, and asked her to file a supplemental brief to point out the many facts and arguments I have in response to the prosecutor's arguments. I typed out a detailed memo telling Ms. Burton what points needed to be made in the supplemental brief. I personally delivered this Memo to Ms. Burtons office.

137. Ms. Burton told me she would prepare and file a supplemental brief for me. I still did not realize she did not have all the transcripts she was supposed to order. I did not know that this problem alone could have caused the appeals court to disregard most of the arguments she made on my behalf.

138. Ms. Burton never prepared or filed a supplemental brief for me. She just told me she had changed the nature of her practice; she was doing more work for a hospital, and she was cutting back on her other cases because it was not fair to her clients.

139. At this point, I was stunned. I knew my appeal was in bad shape, and that if I lost, I was facing two years in prison. I also knew that if I was ever going to show my innocence, my appeal is all I have left. Therefore, I had to hire another appellate lawyer.

140. I told my new appellate lawyer, Mr. Royal, all that happened. I gave him all the evidence I collected, and he got more of the evidence on his own. He has gotten affidavits from my witnesses and others for the first time. They describe

what they could have told the jury at my trial. They have all said that their affidavits are the first ones they ever made for this case, and that neither my previous trial lawyer nor my previous appellate lawyer ever called them. Also, all of them were willing to come and testify on my behalf.

I can testify to the foregoing matters truthfully and honestly, based upon personal knowledge, except as to those matters which this Affidavit states I was told or learned of from another person. As to those matters, I believe them to be true. If called in any proceeding as a witness, I am competent to testify, and willing to testify to all matters that are within my knowledge, information and belief

/s/_____
NATASHA LATHAM

Date:

Subscribed and sworn to before me
On this 10 day of Nov. , 2004
/s/_____
NOTARY PUBLIC
County of Wayne
My commission expires: 10-21-06

APPENDIX J

STATE OF MICHIGAN
IN THE COURT OF APPEALS

Court of Appeals No. 48950
Lower Court No. 02-014475

[Dated November 10, 2004]

PEOPLE OF THE STATE MICHIGAN,
Plaintiff Appellee

vs

NATASHA LATHAM,
Defendant-Appellant.

STATE OF MICHIGAN)
)SS.
COUNTY OF WAYNE)

AFFIDAVIT OF DUANE L. BERRY

Duane L. Berry, having been sworn, states:

1. I am competent to testify to all matters stated in this affidavit, and as to any other matters within my knowledge, information, and belief, except where this affidavit indicates I have been told something by someone else, and, as to those matters, I believe them to be true.

2. The defendant-appellant Natasha Latham ("Natasha") has been my girlfriend for approximately two and one half to three years. Because I am with her often, I have knowledge of the events I have described in this affidavit.

3. From the spring of 2002 until November of 2002, Natasha frequently stayed overnight at an apartment rented by her brother Tony Griswold ("Tony"). Tony had been renting this apartment for approximately the past two and one half years. The apartment was in the Evergreen Estates Apartment Complex ("Evergreen Estates") at 19267 Voltrobeck Drive in Detroit. It is a second floor apartment.

4. I was aware that Tony wanted Natasha to stay at his apartment several nights a week to watch the apartment for him; he was attending school in Pontiac, and had a new baby to help out with, so he did not stay overnight at his Evergreen Estates apartment very often. Tony was also out of town for several weeks during the Summer of 2002. Tony wanted his apartment to appear to be "lived in", because it had been burglarized in the past. This was convenient for Natasha as well, because she worked at the time at a Beauty Salon which was located nearby.

5. When Natasha spent the night at Tony's apartment during 2002, I often spent the night with her; I usually spent several nights a week at the apartment with Natasha.

6. In approximately May or June of 2002, a woman who we later learned was named Michelle Wilson ("Wilson"), began to take an unusual and intrusive interest in both Natasha and myself, and in our "comings and goings" from the Evergreen Estates apartment. Wilson appeared to be paying close attention to what Natasha and I were doing.

7. We learned that Wilson lived in a building adjacent to the building where we were staying in Tony's apartment. We also learned that Wilson could, and apparently did, watch what we were doing from her apartment window.

8. Neither Natasha nor I had ever met Wilson before. We were not interested in her, or in what she did with her life. Later, however, she started bothering us so much that we became worried she was out to harm us or to create serious problems in our lives.

9. In early November, events began to take place, which made it clear that Wilson was obsessed with hatred for Natasha. Wilson began causing problems and harassing Natasha and me. Sometimes she would be with friends, and they would all harass Natasha and me.

10. I was normally with Natasha when Wilson first started creating trouble. Wilson's pattern was to start an argument with me; then she would try to provoke Natasha to get involved.

11. During 2002, I was driving a black convertible Boxter. The car was registered to a friend of mine named Matthew Ducco ("Matthew"), who lived in Sterling Heights. He obtained the car, but I drove it and made the payments on it. I took special care not to damage this car in any way, because it was a very nice car.

12. I first saw Wilson in May or June of 2002, when I was arriving at the apartment to visit Natasha. Wilson came to the window of her own apartment dressed only in her underwear. I happened to notice that she was staring very intently at me. I thought this was unusual because I don't normally see women in their underwear staring at me from

apartment windows. However, I did not display any reaction, and simply passed it off at the time. As time went on, I continued to notice Wilson peering out of her apartment window early in the morning and late at night as I arrived at or left the apartment where Natasha and I were staying. I found this to be very strange.

13. At the Evergreen Estates apartment complex, the parking lot is often full. It is common for the tenants to park on the grass or on other paved areas when there are no spaces left in the parking lot for their cars. To my knowledge, when the lot was full, other tenants parked wherever they could find space, and they did not get warning letters or get tickets because of where they left their vehicles.

14. Sometime in the fall of 2002, I learned from Natasha that the management of the apartment complex had sent Tony a letter dated October 17, 2002, which stated that an unidentified person had brought it to the attention of the management that someone was living in Tony's apartment who was not on the lease. The letter also stated that a car driven by someone who was frequently visiting the apartment was often parking on the grass or on a concrete slab in the parking lot, and that this is against the rules. The letter warned Tony that he was in violation of his lease and that this was grounds for eviction. It was apparent to both Natasha and I from the contents of the letter that it was Wilson who had made these complaints to management.

15. Then, towards the end of October, 2002, Wilson started regularly parking her car in the apartment complex so as to block my car from being able to leave. However, until November 10, 2002, I was always able to maneuver my car around her car and drive out of the apartment complex without damaging my car.

16. Then, in early November, 2002, Wilson's hatred seemed to escalate dramatically, and she initiated several unpleasant encounters between Natasha and I, and herself.

17. On approximately November 10, 2002, I drove to the apartment to pick up Natasha. I parked my car on a concrete slab near the parking lot where tenants were technically not supposed to park. However, it is not unusual for tenants to park there, as well as on the grass, when the parking lot is full.

18. I went upstairs to the apartment to get Natasha. I was only in the apartment for a few minutes. We both left the apartment and, as we approached my car, we observed that Wilson had driven her car, a red Sunfire, onto the grass, blocking my car from leaving the way I came in. There were many other places Wilson could have put her car, so I knew that she was intentionally blocking my car in. The only way for me to drive my car out without her moving her car was to drive over a curb, which I knew would damage my vehicle, which was very low-slung.

19. Natasha and I then saw Wilson come out of her apartment building, approach her car and get some bags or packages out of it. I stopped to ask Wilson to move her car so we could leave. As I spoke, Natasha walked over to my car and got in. Wilson told us that we should not have parked there. Wilson carried her belongings towards her apartment building, leaving her vehicle there, blocking us in. I was extremely angry. I started yelling at Wilson to move her car. I used profanity, and threatening, menacing words. My voice was loud and angry. Nonetheless, as I was shouting at Wilson, she was obviously not intimidated or afraid of me. She did not back away or act frightened of me at all, although I am 6′ 1″ tall, and I was extremely angry with her. Natasha

simply got in my car and did not participate in the verbal exchange.

20. As I hollered at Wilson, I wanted to assault her, but I did not do so. Wilson began to scream and yell profanities at me as loud as I was cussing at her. She refused to move her car. Natasha finally told me to get in the car, and not to bother with her. I did this and drove over the curb at the lowest point which was accessible to me. Nevertheless, I scraped the bottom of my car, which I wanted to avoid. Natasha and I then drove away.

21. A couple of hours later on the same day, November 10, 2002, Natasha and I returned to the Evergreen Estates apartment. I looked out the window, and saw Wilson standing behind my car. I asked what she was doing. Provoking me again, she said she was writing down my license plate number "in case she needed it." After we argued about my license plate number for a few minutes, Natasha came to the window, said a few profanities, and told Wilson to take care of her kids, mind her own business, and leave us alone. However, although Natasha was angry and profane, she never threatened Wilson in any way.

22. Wilson then threatened to have my car "moved," "removed", or "towed." Outraged at this threat, I shouted to Wilson, "If you touch my car, I'll shoot the shit out of you." Wilson acted completely unintimidated, and immediately responded verbally with a threat: "You're not the only one with a gun." Wilson then came walking closer to the window to our apartment, and yelled at Natasha: "Comedown here and say that shit." She was clearly trying to provoke a physical confrontation with Natasha. Again, Natasha made no threatening remarks, and did not leave the apartment or go downstairs.

23. Later in the evening of November 10, 2002, Natasha and I were alone inside the apartment watching a movie. We heard noise and commotion outside. We both looked out the window, and saw Wilson and at least two other women looking up at our window. One of the women was holding a baseball bat, and the other was holding the leash to a vicious looking Rottweiler dog. All three women were taunting Natasha to come down and fight with them. Natasha and I ignored them and continued watching our movie.

24. As of November 10, 2002, Natasha and I had no doubt that Wilson was stalking and harassing us. Wilson had obviously watched us return to the apartment, and then went outside to get my license plate number. She was watching our private conduct, and she was intentionally trying to provoke confrontational situations. We had no idea why she was so concerned with us. She seemed to be begging for a fight with Natasha through her arguments with me.

25. The evening of November 12, 2002, I stayed overnight at Natasha's apartment. I arrived after dark, and parked my car on a concrete slab just below our apartment window, where I could see it from the window. I did not see anyone else around when I arrived.

26. Natasha and I woke up at about 8:30 a.m. on November 13, 2002. After I woke up, I looked out the window at my car to make sure it was all right. I saw a large green sticker on the window of the car. I also noticed that, on this particular morning, Wilson had not parked her car so as to block mine in, which had become her habit. I quickly pulled on some pants and a shirt, and ran downstairs to see what it was. On my way our of the apartment, I picked up the one key that opens the heavy steel security door that is the backdoor which leads from our apartment building into the

courtyard where my car was parked. The security door swings shut automatically, so I had to take this key with me or I would not be able to get back into the building. The apartment only has one copy of this key.

27. When I got outside, I started peeling the green sticker off the window of my car. Just then, Wilson drove up in her red Sunfire, pulled into a nearby parking space, and got out of her car. I was livid about the sticker. I was certain she had either placed it there herself, or had caused someone else to do so. I verbally accused her of putting the sticker on my car. She just smirked, and told me that I'm not supposed to park in that location, and that I'm not "special." She said she knew my name was Matthew, and that she knew where I lived. She said: "I have your address, and I can find your house. I know Sterling Heights like the back of my hand." "Matthew" is the name of the registered owner of my vehicle and he lives in Sterling Heights. Wilson had obviously been able to run an illegal registration check on my vehicle, and was assuming that I was the registered titleholder of my car. As she said all this, she began to walk from her car towards the porch at the back door of her apartment building. As she walked, I walked around my vehicle and moved to cut her off. I was approaching her from her right, rear.

28. I was so full of wrath for Wilson that I cussed and yelled at her. I was sick of her, and I felt it was time to react to her harassment in a harsh manner. I walked toward her, threatening her loudly as I did so. I felt like I wanted to assault her.

29. Wilson stopped and turned as I approached. She never appeared intimidated, and never backed away as I walked toward her. She was also speaking loudly and profanely, and was also clearly escalating the situation, as if

she wanted me to fight with her. At the same time, she began calling for someone named "Sterling" to come down. However, she did not move away from me; she did not back up towards her apartment, and she did not go inside her apartment to avoid a fight, although she could easily have done so.

30. When we were about three to four feet apart, and still arguing loudly, Natasha came to the apartment window and yelled down to me, "Don't touch her!" Natasha was not holding a .25 caliber handgun. Natasha had her cell phone in her hand—not a handgun—when she came to the apartment window to yell to me and tell me that I should not assault Wilson.

31. Natasha and I then saw "Sterling" come outside of Wilson's apartment in his boxers. When he came out, Wilson and I were standing approximately 3 to 4 feet apart, and we were still having an intense, loud, argument. Sterling stood on the porch at the back door of their building. At that point he was about seven feet away from me. When Sterling came out, Wilson began to walk over towards her back porch, where Sterling was. Their back porch is located at the back door to their building, approximately 40 feet from the back porch at the back door to our building.

32. Natasha never left the apartment that morning. She did not come downstairs at all. She certainly never came downstairs and came outside carrying a gun. She was still wearing the short t-shirt she had slept in. She never threatened Wilson with a weapon from the window, either. I was there and I saw the whole thing. She never had a gun in her hand, and she was never outside with a gun, or standing at a window on the stairs with a gun.

33. During the time when Wilson claimed Natasha was outside with a handgun, or was at the window pointing a handgun, not one person in the apartment complex yelled: "gun!" or "she has a weapon!" or "get down, she has a gun!" Or any other statement of warning indicating that someone had seen a person with a weapon.

34. Natasha does not care for guns; she has never touched one in her life, as far as I know. To my knowledge, Natasha knows nothing about guns. Picking up a gun and pointing it at another person is not in Natasha's character. She has no experience with guns, and it is not in her nature to think about using one to solve a problem. She is a nonviolent, non-aggressive person who does not pick fights. I would be very shocked and alarmed had I seen her at any time holding a gun that day. She is not foolish enough to pick up a gun. She does not know how to hold a gun, and she does not know how they operate. If I had seen her with a gun at any time that day, I would have been so alarmed I would have forgotten about Wilson, and made sure Natasha put the gun down.

35. In addition, Natasha could not have left the apartment with a gun within the time frame Wilson described. Natasha was still dressed in the short T-shirt and underwear that she had slept in. To come downstairs and go outside, as Wilson claimed at trial, Natasha would have had to get dressed, find the gun, figure out how to hold onto it, and then leave the apartment without the key she would need to get back in the rear steel security door. This steel security door is the door that Wilson testified at trial was the door which Natasha came out of when she supposedly came outside and "pointed a gun" at Wilson. Natasha would have had to open this steel door while holding the gun. In fact, Natasha did not go outside the building at all that morning during my confrontation with Wilson.

36. After Natasha appeared in the apartment window, and told me not to hit Wilson, I tried to calm down. When Sterling came out, I hoped he would calm Wilson down, so I said to "Sterling:" "Dog, you better check her [Wilson]". "Sterling" replied: "I ain't checkin' shit." I started to walk back to the apartment building where we were staying. I opened the heavy steel security door leading inside to the apartment building, went upstairs, and returned to the apartment.

37. I went back upstairs to the apartment, and told Natasha to call the apartment complex management about the sticker on my car and the altercation. Natasha had her cell phone, and said she was already calling someone. This is the same cell phone that I saw her holding when she came to the apartment window and yelled at me.

38. I had peeled the green sticker off the car while I was downstairs. When I got into the apartment, I threw it away, and gathered up some things to return to my home to get ready to go to work. I went back downstairs and walked towards my car. As I walked towards the car, Wilson called out to me from her apartment window: "Where are you going Matthew? Where are you going Matthew? Wait 20 minutes!" I gave Wilson "the finger", got in my car, and drove off..

39. About five minutes later, I called Natasha on her cell phone to warn her about what Wilson had said to me about "waiting 20 minutes." Natasha was still at the apartment. When she answered, she said she was in the middle of a phone conversation with someone in the apartment manger's office, and she had put this person on hold to speak with me. I told Natasha that as I drove away Wilson called me "Matthew" and yelled to me to "wait 20 minutes." I was worried that Wilson had called the police

about my threatening behavior, and that Wilson wanted me to wait until the police arrived. Natasha told me there were no police around. She then ended our call, and she returned to her conversation with the apartment manager.

40. After Natasha finished her call with the apartment complex manager, she called me back. She told me she had talked to a woman named "Judy." Natasha told me that Judy downplayed the incident, and told Natasha not to worry about it. Judy's only suggestion was for Natasha to avoid Wilson.

41. I had been outside during the entire altercation with Wilson. I saw that Natasha never, ever held a gun, pointed a gun, came outside through the security door and pointed a gun, looked out the window from the apartment stairs with a gun, or even touched a gun that morning. I therefore had first hand knowledge that Natasha never pointed a weapon at Wilson or held a weapon at any time.

42. Later, I learned that Wilson called the police and made up a story about Natasha pointing a gun at her. Natasha called me from the police station where she had been locked up. Although I had threatened Wilson verbally, and almost assaulted her with my hands, I learned Wilson did not complain about me to the police. Her aim was obviously to hurt Natasha, who was not even involved at all in the argument and altercation over the apartment parking lot rules.

43. I went with Natasha to her November 27, 2002 preliminary examination, held at the 36th District Court in Detroit. She was represented by a female attorney from the Defender's Office, whose name I do not recall.

44. As I sat in the hallway with Natasha waiting for Court to start, Wilson was also there. Natasha and I

intentionally sat far away from her. However, Wilson and several women who were with her began talking about me very loudly in the hallway. Wilson started cussing at me and commenting about me with an angry, indignant, profane, and hostile tone of voice. She and her friends were talking loudly about me as if I was not even there. I had no desire to put up with this, so I told Natasha it might calm things down if I simply left. So I left the court building.

45. Later, I went with Natasha to several meetings with her trial lawyer, Brian Gagniuck ("Mr. Gagniuk"). Natasha and I both told Mr. Gagniuk the entire story as I have described it in this Affidavit. Everything in this Affidavit is information that we gave to Mr. Gagniuk during out meetings with him. We told him that Wilson had been watching us, and was stalking Natasha and harassing her. We also told him about the arguments she provoked over trivial matters in an apparent attempt to start a physical fight.

46. We both told Mr. Gagniuk that Natasha was not guilty of any crime, that she never came outside during the argument between Wilson, and me and that Natasha was not touching, holding or pointing a gun at any time. We let Mr. Gagniuk know clearly that only I was involved in an intense argument with Wilson, and that Natasha acted to try to cool things down.

47. We both explained to Mr. Gagniuk that Natasha had come to the apartment window, holding her cell phone, not a gun, and had yelled at me, not Wilson, and told me not to touch Wilson.

48. I was present and heard Natasha made it very clear to Mr. Gagniuk that she did not hold or point a gun on the morning of the incident; that she never went outside and

pointed a gun; that when she came to the window she was holding her cell phone, not a gun; and that she shouted at me, not at Wilson, and that she told me not to touch Wilson.

49. I also told Mr. Gagniuk that I had direct knowledge of these facts because I was there and I saw exactly what happened. I told him that Natasha has never, ever touched any gun in my presence, she has never picked one up, and she certainly did not hold a gun or point one at Wilson on the day of the incident in question.

50. Together Natasha and I described to Mr. Gagniuk all the past incidents we had with Wilson, and the altercations that I had with Wilson in which Wilson was not even frightened. In fact, I told Mr. Gagniuk that Wilson was always trying to escalate the situation. Even after I verbally threatened her, when most people would have been frightened and backed away from me, Wilson stood her ground and continued arguing and threatening.

51. Mr. Gagniuk told us he understood that Natasha was innocent. He assured us he would present her defense of innocence as she requested. Natasha explained there were witnesses who knew she never went outside on the morning of the incident, and knew that she did not possess or point a gun. Natasha asked Mr. Gagniuk to interview her witnesses, and gave him their names and other information. Natasha also asked Mr. Gagniuk to take pictures of the two buildings within the complex, to show the distances between the two rear doors of the apartment buildings, between the two back porches, between the two cars, and between Wilson and myself. Natasha also asked Mr. Gagniuk to obtain the tape of the 911 call Wilson apparently made to the police.

52. I attended Court with Natasha on the day of the evidentiary hearing on the defense motion to suppress, which I believe to be March 7, 2003. I waited outside the courtroom while the male police officer who had come to Natasha's brother's apartment on November 13, 2002 testified. I now know his name to be P.O. Patrick Jones. I listened at the door of the courtroom to his testimony. I realized his testimony was not truthful, so I spoke to his female partner who was waiting in the hallway. I now know her name to be P.O. Patrice Roman. When I first got there, Officer Roman had asked me some general questions, such as my name and what I did for a living. After listening to Officer Jones' testimony for awhile, I told Officer Roman what I could hear her partner saying during his testimony. I told her that she knew he was not telling the truth.

53. When the evidentiary hearing was over, Natasha came out of the courtroom. She spoke to Officer Roman in my presence; Natasha told her that her partner, Officer Jones, had been in the courtroom lying. Officer Roman did not disagree; she told Natasha and me that she knew this whole case was "B.S." She said that Michelle was obviously jealous of how pretty Natasha is, and that Natasha has a successful boyfriend. I urged Officer Roman to tell the truth. She told us to tell Natasha's attorney to put her on the witness stand at the trial and she would tell the truth. Later on, however, when she testified at trial, she told the same lies as her partner.

54. Natasha at all times made it clear to Mr. Gagniuk she wanted to testify at her trial. Mr. Gagniuk never, at least in my presence, advised Natasha that she had a right to testify, or that the decision to testify was hers alone.

55. Natasha told Mr. Gagniuk she wanted to testify because she wanted very much to tell the jury about her

innocence. She wanted him to put her on the stand, to put me on the stand, and to call some of her neighbors as well. Mr. Gagniuk verbally agreed with this plan of the defense. Mr. Gagniuk told us he would interview the witnesses and go to the apartment to take the pictures that Natasha wanted because they would show that the events could not have transpired as Wilson claimed.

56. Natasha and I also made it very clear to Mr. Gagniuk that I was a necessary witness on behalf of Natasha, and that I would be testifying at the trial. I made it clear that I was willing and available to testify. I made it clear to Mr. Gagniuk that I was willing to take the witness stand and tell the truth about Wilson's jealous obsession with Natasha, and about how she started trouble at every opportunity. I wanted to tell the jury about my own altercations with Wilson. I wanted to describe how Natasha came to the window during the incident in question, holding her cell phone, not a gun, and talked me out of assaulting Wilson by telling me: "Don't touch her!"

57. Both Natasha and I told Mr. Gagniuk we believed Natasha was Wilson's "target". Wilson was clearly jealous of Natasha in inappropriate ways, had habitually watched and spied on her, had tried to provoke Natasha into a fight, and made spurious complaints to the apartment complex management.

58. Natasha and I both explained to Mr. Gagniuk that Wilson's jealous obsession with Natasha could be proven by the fact that I (not Natasha) threatened to assault Wilson on two occasions, and Wilson never showed any fear. Wilson blamed Natasha for what happened when Natasha was not even present. Wilson had never shown fear of Natasha or me. When Wilson threatened to have my car removed or towed

away, and I said that if she touched my car, I would "shoot the shit out of her," she didn't back off in the slightest. She came right back at me and threatened me that she had her own gun.

59. Yet, based upon the police reports, when Officers Jones and Roman arrived the morning of November 13, 2002, Wilson hardly mentioned my conduct at all. In fact, she told the story as if she and I had just had a minor disagreement, and suddenly Natasha appears with a handgun and takes over the situation. Wilson simply called the police and made up a story about Natasha, not me.

60. Mr. Gagniuk knew all of these things about Natasha's case, and more, because Natasha and I told him. Natasha spoke with him about her defense several times in my presence. She provided him with notes describing in detail what really happened, and discussing the evidence in her defense. Natasha's notes explained how Wilson's portrayal of what happened could not possibly have been true. I heard Mr. Gagniuk tell Natasha: "I am going to get you off".

61. Natasha also told Mr. Gagniuk that the police barged into her apartment without permission while she was in the shower, in order to investigate Wilson's fictitious police report. Natasha told him how the officers treated her, how they questioned her inside the apartment, how she never said anything to them about a .25 caliber weapon, and how she did not peek from behind the door and let them in. Natasha told Mr. Gagniuk that Officer Jones lied at the suppression hearing, and that Officer Roman told Natasha she knew her partner lied, and she promised Natasha she would tell the truth at the trial.

62. As the trial approached, Natasha and I both realized that Mr. Gagniuk had never called or interviewed any of the witnesses that Natasha wanted to testify at the trial. Further, he had never gone to the scene and taken photographs of the area where the incident took place. Therefore, Natasha took pictures of the scene herself, and gave them to Mr. Gagniuk.

63. Very shortly before the trial, Mr. Gagniuk spoke to Natasha in my presence and gave her his final instructions to prepare for the trial, and what her role would be at the trial. I heard Mr. Gagniuk told Natasha that he wanted her to dress "provocatively", and to be "every man's dream girl" at trial. He specifically wanted her to appear sexually attractive at trial. This was his primary advice just before trial. I found this advice to be strange, but I thought he knew best, since he was the attorney.

64. When Natasha and I arrived on the morning of the trial, we were ready to take the witness stand to tell the truth about what happened on the morning of the incident, and refute all of Wilson's lies. However, we were concerned because Mr. Gagniuk had never prepared us for testifying, or discussed what issues were to be covered in our testimony. Then, all of a sudden, on the morning of trial Mr. Gagniuk told Natasha and me that I would not be taking the stand because I had a conviction for uttering and publishing a few years ago. I protested to Mr. Gagniuk that the conviction was because someone had passed me a counterfeit $100.00 bill. I told him that despite that conviction, I now work for a mortgage and real estate company.

65. I could not see how this uttering and publishing matter was such a big problem for Mr. Gagniuk. I was one of Natasha's eyewitnesses, and the only eyewitness, other than

Natasha, who had actually appeared for the trial. However, I felt that Mr. Gagniuk knew best because he was the attorney, so I did not argue about this with him. I also assumed that it was his decision to make on what witnesses would be called to testify in Natasha's trial.

66. Also on the morning of trial, Natasha and I knew that Mr. Gagniuk had not interviewed her witnesses. However, Natasha still planned on testifying. Mr. Gagniuk never said anything that would indicate he did not plan to call her to the stand to testify as we had always discussed.

67. Since Mr. Gagniuk would not let me testify, I sat in the courtroom and watched Natasha's trial. Mr. Gagniuk did not call either Natasha, or any of the other witnesses we had discussed, to the stand to testify. He called no one who could explain to the jury that Natasha is not a violent or assaultive person. All he did was tell the jury that Wilson should not be believed. Without testimony from Natasha or myself, or any other witnesses, the jury never heard Natasha's defense. As it turned out, Natasha really had no chance at trial, because the defense that Natasha and I had discussed with Mr. Gagniuk, and which he had promised to present, was neither investigated before the trial, nor presented to the jury during the trial.

68. In the end, the jury only had Wilson's testimony to consider. They never learned about Wilson's vendetta against Natasha, or about all the prior incidents of harassment which Wilson had instigated. They never learned of Wilson's obsessive and jealous desire to hurt Natasha, and never heard that she was the type of woman who was aggressive and looking for a fight. The jury also never heard that it is not within Natasha's character to threaten others in an assaultive

or violent way, or that she has never pointed or used a gun in her life, or that she has never even felt the impulse to do so.

69. Natasha and I were shocked when Mr. Gagniuk rested the defense case and did not call Natasha or any of her witnesses to the stand. I was present during almost every one of the discussions Mr. Gagniuk had with Natasha during the trial, and he never said one word to her that he had made the decision that he would not call her to the witness stand. To my knowledge, Mr. Gagniuk never told Natasha that she had a right to testify, or that the decision not to testify was hers and her alone. Mr. Gagniuk also never told Natasha that she had a right to call witnesses on her behalf, or that she had a right to present her defense. At the next recess of the court proceedings, Mr. Gagniuk was questioned in my presence about why he rested the defense case without calling Natasha to the stand. All he would say was that it was just "too late" to call her to the stand.

70. As it turned out, Mr. Gagniuk deprived Natasha of her defense at trial. He never even told Natasha why he rested the defense case without calling her to testify. He never explained why he did these things without Natasha's permission or consent. The plan for the defense had always been that Natasha would testify in her own defense, and refute all of Wilson's lies. Natasha and I had spent a lot of time giving Mr. Gagniuk all the facts of the incident in question and its background, and about the defense witnesses who were available. Mr. Gagniuk did nothing with all this information, and he never told Natasha or I why he just ignored it.

71. Mr. Gagniuk failed to present Natasha's defense to the jury, so the jury never heard all the facts and testimony that Natasha had worked so hard to make Mr. Gagniuk understand. Then, the prosecutor made a big deal in his

closing argument, and told the jury that Natasha presented no evidence to contradict Wilson's version of what happened. I believe this argument went a long way toward convincing the jury to convict Natasha.

72. Because Natasha's defense was never presented, the jury convicted Natasha of crimes she did not commit.

73. After the jury conviction, Natasha hired attorney Ms. Delphia Burton to represent her at her sentencing hearing, and on appeal. Natasha and I went together to meetings with Ms. Burton. I heard Natasha gave her all the information about what she had asked Mr. Gagniuk to do during the trial, that he did not do. Natasha wrote detailed notes for Ms. Burton, and showed Ms. Burton the photographs and other materials that she had given Mr. Gagniuk.

74. Ms. Burton assured Natasha and me she was competent to present to the courts all the issues concerning Mr. Gagniuk's poor performance at trial, and his failure to defend her. I did not know that Ms. Burton should have first tried to present to the trial court all the information and evidence that Mr. Gagniuk knew about but failed to present at trial, by way of a request for a new trial and for an evidentiary hearing. Ms. Burton did not file anything in the trial court. Later she filed a brief in the Court of Appeals that did not explain Natasha's position at all. There was nothing in it establishing all the information we had given Mr. Gagniuk before the trial or showing all that Natasha and I could have testified to if we had been called to testify.

75. Natasha received and read a copy of the prosecutor's brief which was filed in response to the brief that Ms. Burton had filed on Natasha's behalf. Natasha asked Ms.

Burton to write a supplemental brief on her behalf, in order to respond to the arguments made by the prosecution. I saw Natasha type up a detailed memo for Ms. Burton explaining the points that Ms. Burton needed to make in the supplemental brief. I read the Memo when it was finished. But, as far as I know, Ms. Burton never prepared or filed any supplemental brief.

76. Since Ms. Burton never filed a Supplemental Brief, Natasha was forced to look for new appellate counsel. As a result of the efforts of the new appellate counsel, I now finally have the opportunity in this Affidavit, for the first time, to explain what I saw and heard on November 13, 2002 and in the weeks leading up to that day, concerning Michelle Wilson.

I can testify to the foregoing matters truthfully and honestly, based upon personal knowledge, except as to those matters which this Affidavit states I was told or learned of from another person. As to those matters, I believe them to be true. If called in any proceeding as a witness, I am competent to testify, and willing to testify to all matters that are within my knowledge, information and belief

/s/
DUANE L. BERRY

Date:

Subscribed and sworn to before me
On this 10 day of Nov. 2004
/s/
NOTARY PUBLIC
County of Wayne
My commission expires: 10-21-06

APPENDIX K

STATE OF MICHIGAN
IN THE COURT OF APPEALS

Court of Appeals No. 48950
L.Ct. 02-014475

[Dated October 30, 2004]

PEOPLE OF THE STATE OF MICHIGAN)
Plaintiff-Appellee,)
)
-v-)
)
NATASHA LATHAM,)
Defendant-Appellant.)
)

AFFIDAVIT OF APREL ROBY

STATE OF MICHIGAN)
)SS.
COUNTY OF WAYNE)

Aprel Roby, being first duly sworn, deposes and says:

1. My name is Aprel Roby. I am twenty-one years old. I am making this Affidavit based upon personal knowledge, and I am competent to testify in a court of law.

2. I have known Natasha Latham since we were both in Middle School. She is one of my best friends.

3. I attended two of Natasha's court appearances in this case, the preliminary examination and the first day of trial.

4. It is my understanding that Natasha was charged with two crimes in this case after a woman named Michelle Wilson, who lived in another building in Evergreen Estates, the apartment complex where Natasha's brother lived, began harassing her and her boyfriend, Duane Berry, for no reason.

5. I know Natasha Latham is not a violent person who threatens other people. She would never start harassing anyone, including someone she never met in her life. Natasha never got in fights at school or anywhere else.

6. Natasha Latham does not use or carry any weapons for any reason, and, as long as I have known her, she has never touched or pointed a handgun at anyone.

7. To my knowledge, Natasha was minding her own business and staying at her brother Tony's apartment, often with her boyfriend Duane, during late spring, summer, and fall in 2002.

8. It was during this time that Michelle Wilson, a woman Natasha her never met before in her life, started watching and harassing both her and her boyfriend, Duane. Natasha told me on one occasion about this Michelle Wilson, who lived in another apartment and who had been harassing her.

9. I took Natasha to some of her court dates during this case so I could lend her moral support. I personally observed

how traumatized Natasha was as a result of being prosecuted in this case.

10. When Natasha appeared in 36th District Court for her preliminary examination, I was there with her. I heard the 36th District Court judge tell everyone involved in this case to stay away from each other, and not to have any contact with each other.

11. After court ended, Natasha and I began to leave. As we waited for the elevator in the 36th District Court, Natasha started talking to a man in a suit. Then the elevator arrived and Natasha, the man, and I got on the elevator.

12. Just as the doors of the elevator started to close, Michelle Wilson grabbed the elevator door to block it from closing. She pulled the doors open and got in the elevator with a friend and one older woman, even though Natasha and I were standing in the elevator in plain view. Michelle and her two companions barged into the elevator in direct violation of the 36th District Judge's Order for all of us to stay apart.

13. Michelle and her companions then started harassing Natasha by loudly making crude, nasty remarks about Natasha to each other, in front of us. At this time, I don't recall exactly what was said. However, I do remember I started arguing with Michelle Wilson and her companions. The man in the suit told us to calm down.

14. After we got to the first floor, the elevator door opened. We all got off the elevator. One of Michelle's companions started talking loudly and taunting Natasha, saying things like: "You're Guilty!" and "You're going away for two years!" Natasha did not respond.

15. I started to speak up again. Natasha Latham and I and, and the man in the suit, who had joined us while waiting for the elevator, stopped. Michelle Williams and her group left. The man in the suit walked with us to the outside of the building. He asked where Natasha and I were parked. He said, "Ladies, just go to your car and go home." He said he was a Police Officer. He gave Natasha his business card.

16. Approximately two to three weeks after the incident in the elevator at 36th District Court, Natasha Latham and I went back to the apartment complex where her brother lived, and where the original incident took place, to get some of her clothes and personal belongings from her brother's apartment. We arrived some time between 3-5:00 p.m. Upon our arrival, Natasha Latham and I went to her brother's apartment. We were there for about 30 minutes.

17. When we had packed up the things Natasha was going to take with her, I left the apartment to go back to the car and start it up. Natasha was getting ready to carry a bag of clothes out to the car. I left ahead of Natasha; I walked to my car, and got in it to start the engine. As I got into my car, I saw Michelle Wilson. She was standing by the door to her own apartment. There was a large moving truck parked in front of her apartment. I then noticed a police car pull up with its sirens on; it parked behind my car, blocking me in. One of the officers asked for my driver license and registration. While the Officer looked at my papers, Michelle Wilson started talking loudly to me and I responded in kind.

18. The officer then asked if Natasha Latham was still in the apartment. At this point I realized he was one of the police officers who had been at the 36th District Court for Natasha Latham's Preliminary Examination. The officer asked what Natasha and I were doing there at the apartment

complex. I told him I had brought Natasha to the complex to get some clothes from her brother's apartment. The officer asked if we had been there harassing Michelle Wilson, and I told him we had not done anything like that. I told the officer we did not see Mitchell when we pulled up; all I saw was a truck in front of her building.

19. While I was talking to the police officer, Natasha Latham came out of the apartment. building. The officers then began to ask her questions about what she was doing there.

20. While we were detained there, the police surrounded us and they were asking me all kinds of questions. I was afraid. I told the police that Natasha and I were simply trying to move her personal belongings out of the apartment.

21. After talking to us for a while, the police officers said that Natasha Latham and I could leave, and we did

22. After this incident, I realized that Michelle Wilson had seen what kind of car I drove.

23. The attorney who represented Natasha Latham at trial never tried to contact me, never talked to me, and never asked me any questions about what I could testify to.

24. In addition, Natasha's trial attorney did not call me as a witness at trial to testify about the harassment in the elevator, or at the apartment complex. I was available to testify at trial for the defense, and would have done so if requested.

25. After Natasha's trial was over, her first appeal lawyer did not ever call me; she never asked me to sign an affidavit, or testify at any other Court hearing.

26. This affidavit is the first one I have ever made for Natasha's case.

27. The information in this Affidavit is true and correct to the best of my knowledge and belief. I am competent to testify to the matters contained in this affidavit.

Further affiant sayeth not.

/s/_____
APREL ROBY

Subscribed and sworn to before me
this 30th day of OCTOBER, 2004.
/s/ Dolores M. Goldbetter
NOTARY PUBLIC
COUNTY OF: Wayne
ACTING IN THE COUNTY OF: _____
My commission expires: April 17, 2005

APPENDIX L

STATE OF MICHIGAN
IN THE COURT OF APPEALS

COA No. 248950
L.Ct. No. 02-014475

[Dated November 3, 2004]

PEOPLE OF THE STATE MICHIGAN,
Plaintiff-Appellee

vs

NATASHA LATHAM,
Defendant-Appellant.

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

AFFIDAVIT OF VIRGINIA ADAMS

VIRGINIA ADAMS, having been sworn, states:

1. I am competent to testify to all matters contained within this affidavit, and to any other matters within my knowledge, information and belief.

2. In November of 2002, I was living in the Evergreen Estates, which is on Voltrobeck Rd. in Detroit. I was a neighbor of Natasha Latham's brother, and I knew that Natasha Latham sometimes stayed in her brother's apartment with her boyfriend. I remember the day in November of 2002 when Natasha Latham was arrested by police officers after a woman in another apartment building, who I later found out is named Michele Wilson, argued with Natasha Latham's boyfriend about where he should park his car.

3. Several days earlier, I had previously heard Natasha, her boyfriend, and Michelle arguing about where to park in the parking lot. I saw Michelle and some friends harassing Natasha and her boyfriend with a dog. After Natasha told her boyfriend to ignore Michelle and come in to the apartment, I heard Michelle calling Natasha out, by saying something like: "You come on down, you think you're bad." Michelle also threatened to go get some dogs and some of her friends. She came back later with several other young men and two women.

4. On the day Natasha was arrested, I heard some noise from outside, so I looked out my window. I could see Michelle and Natasha Latham's boyfriend outside and downstairs. They were standing still about 7 to 12 feet apart from each other and they were arguing. I heard Michelle tell Natasha's boyfriend that he should not park his car where it was.

5. I could then hear Natasha Latham's voice from my upstairs window, but I could not see her, and I could not understand what she said.

6. I am sure that during this argument, I did not hear anyone say anything about a weapon, nor did I hear anyone threaten to hurt anyone.

7. I am also sure that Natasha Latham did not ever go downstairs and outside that morning anytime before the police arrived and arrested her.

8. I heard Natasha Latham's boyfriend move his car and drive away.

9. When the police officers arrived, I was inside my apartment. I do not know the exact time the police arrived at Natasha Latham's brother's apartment. I looked outside and saw police officers taking Natasha Latham to the parking lot.

10. Until recently, I was never called or contacted in any way by any lawyer for Natasha Latham to testify about what I saw that day. I never received a notice to appear in Court.

11. Finally, in 2004, a lawyer for Natasha Latham called me about this situation. I told him what I had seen and heard. He asked me to sign an affidavit about it and I agreed.

12. The statements herein are true and correct to the best of my knowledge, information and belief. I can give truthful testimony as to these matters if asked to do so, and can testify as to any other matters within my knowledge information and belief.

/s/_____

VIRGINIA ADAMS

Subscribed and sworn to before me
this 3rd day of November , 2004.
/s/
NOTARY PUBLIC
COUNTY OF: Wayne
ACTING IN THE COUNTY OF: _____
My commission expires: 10-21-06

APPENDIX M

STATE OF MICHIGAN
IN THE COURT OF APPEALS

COA No. 248950
L.Ct. No. 02-014475

[Dated October 31, 2004]

PEOPLE OF THE STATE MICHIGAN,
Plaintiff Appellee

vs

NATASHA LATHAM,
Defendant-Appellant.

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

AFFIDAVIT OF DETROIT POLICE INVESTIGATOR KENNETH EMERSON

INVESTIGATOR KENNETH EMERSON, having been sworn, states:

I am competent to testify as to all the matters contained within this affidavit, and to any other matters within my knowledge information and belief.

I am an Investigator with the Detroit Police Department, at the Sixth Precinct.

1. I was at the 36th District Court in Detroit on November 27, 2002. I witnessed several women harassing, and insulting Natasha Latham that day.

2. I recall that day because the harassment was coming from a woman who was allegedly the "victim" of Natasha Latham. This victim had approximately two women with her who also harassed Natasha Latham. These aggressive women displayed character traits that did not comport with "being victimized". I based this impression upon my knowledge and experience as a police officer, and as a citizen.

3. I also formed the opinion, based on my observations and my experience, that Natasha Latham, who I learned was the Defendant in a felonious assault/felony firearm matter, and who allegedly pointed a weapon at the "victim", did not possess the characteristics of a person who would pick up a weapon and point it at such an obnoxious woman as I saw that day in the elevator.

4. I saw how upset Natasha Latham became at hearing the women's' foul, aggressive and intimidating language. In my experience as a police officer, most women who appear frightened as Natasha Latham did that day, do not "pull guns" on people who exhibit such aggressive behavior in public, and certainly not in private.

5. My observation of the harassment began when Natasha Latham, a female friend of hers, and I stepped into a "down" elevator at the 36th District Court. I was wearing plain clothes at the time.

6. Just as the elevator doors were closing, approximately three women pushed the doors open. They seemed determined to get on our elevator and they managed to *squeeze in.*

7. Inside the elevator, the three women immediately began talking amongst themselves about Natasha Latham. They talked about her as if she were not standing in the elevator

8. The women were saying obnoxious, demeaning, and provocative things to Natasha Latham. They used foul language, and hostile voices. It was clear to me that the women were deliberately trying to harass and intimidate Natasha Latham and possibly provoke her into making a response to them.

9. Natasha Latham looked away from the women, and did not say a word.

10. I also believed that the women wanted to provoke a physical fight with Natasha Latham. I formed this opinion based upon their demeanor, the aggression in their voices, and the humiliating language they used in Natasha Latham's presence.

11. Natasha Latham did nothing to escalate the tense situation by responding to the epithets that the women directed at her.

12. When everyone got off the elevator, Natasha Latham seemed shaken. I tried to calm her down. I encouraged her not to allow the women to upset her. However, the women were still making comments about her in the lobby, and she still made no response.

13. I was surprised when Natasha Latham told me that she was the defendant in a felonious assault, felony firearm case, and that one of the women in the elevator was supposedly her victim. Those women were aggressive, spiteful, belligerent and antagonistic. They had attacked and provoked Natasha Latham using "fighting words". Natasha Latham seemed stressed. She was upset and struggling to ignore their words.

14. The alleged victim and her friends in the elevator showed absolutely no fear of Natasha Latham. They were deliberately inspiring a sense of fear in her, and deliberately humiliating and demeaning her.

15. Because of the situation I witnessed, and the fact that Natasha Latham was charged with offenses but being victimized by aggressive "victims", I gave Ms. Latham my business card (in my capacity as a real estate agent, not as a police officer for the Detroit Police Department). I did this in case Natasha Latham needed to call on me to testify about the events I witnessed.

16. I did not hear from Natasha Latham or from anyone representing her for a long time.

17. Natasha Latham's trial attorney never called me or left me a message about testifying on her behalf. He never interviewed me or asked me what happened. I was available to testify had I been asked to do so.

18. I never knew what happened to Natasha Latham, or if she had a trial, or what the outcome was if she did go to trial. If she had an appeal, her appellate attorney did not call me to find out what I had seen.

19. In 2004, Natasha Latham contacted me about making a statement on her behalf. She had been convicted of felonious assault and felony firearm. She asked me if I recalled the incident at 36th District Court, and, if I did recall it, whether I would be willing to sign an affidavit about my observations of the harassment that day.

20. Because I witnessed and remembered recalled how Natasha Latham had been harassed by several aggressive women in the elevator and in the lobby of the courthouse, and I recalled that she had done nothing to provoke the verbal onslaught, I agreed to make this affidavit for her

21. I also clearly remembered how the women who pushed their way on the elevator immediately began to direct foul, aggressive and intimidating language at Natasha Latham. There has never been a question in my mind that the women wanted to upset and provoke her. In my experience as a police officer, women who respond with dignity and self-control in the face of such intimidation—as Natasha Latham did that day—are not likely to "pull guns" on such aggressive individuals.

22. I have not previously spoken to any attorney representing Natasha Latham. Ms. Latham gave me the number of her new lawyer, and asked me to call that attorney. I did phone the attorney, and I explained what I saw, and what I heard. When asked by the attorney, I gave my opinion about what I witnessed in my capacity as a police officer.

23. Based upon my observations of the behavior displayed by the three women, as compared to that of Natasha Latham, Natasha Latham was obviously victimized by the women on that day.

24. This Affidavit has been my first opportunity to attest to a Court the things that I saw and heard at 36th District Court on November 27, 2002.

I hereby CERTIFY that the foregoing information is true and correct to the best of my knowledge, information and belief. I can testify truthfully as to these matters and as to any other matters about which I possess knowledge, information or belief, should I be called as a witness to do so.

/s/
INVESTIGATOR KENNETH EMERSON

Subscribed and sworn to before me
this 31st day of October, 2004.

/s/ Dolores M. Goldbetter
NOTARY PUBLIC
COUNTY OF: Wayne
ACTING IN THE COUNTY OF: _____
My commission expires: April 17, 2005

APPENDIX N

STATE OF MICHIGAN
IN THE COURT OF APPEALS

COA No. 248950
L.Ct. No. 02-014475

[Dated October 31, 2004]

PEOPLE OF THE STATE MICHIGAN,
Plaintiff-Appellee

vs

NATASHA LATHAM,
Defendant-Appellant.

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

AFFIDAVIT OF SYLVANIA CARLISLE

SYLVANIA CARLISLE, having been sworn, states:

1. I am competent to testify to all matters contained within this affidavit, and to any other matters within my knowledge, information and belief.

2. I am Natasha Latham's grandmother on the maternal side of her family.

3. Natasha and I are extremely close.

4. Natasha lived in my home for the first five years of her life.

5. I watched Natasha grow up into a young woman.

6. I also attended Natasha's trial and listened to all the testimony.

7. Natasha is a sweet girl who has never caused trouble.

8. Natasha does not have a character for committing violent acts to resolve problems. She has a reputation as a person who is peaceful and law-abiding. This is also my opinion. To my knowledge, she has never been in a fight.

9. In our family home, and in the homes of our relatives, we have never kept guns, except hunting rifles. The only guns in my house when Natasha was young were two hunting rifles that belonged to my husband, which were kept locked up, and were never displayed in the house. My husband took them out of the house only when he went hunting. I don't believe Natasha ever even knew about them.

10. Natasha did not grow up with guns or violence in her life.

11. I have never seen Natasha with a gun, near a gun, talking about guns, talking about how to shoot a gun or even how to hold one. We are a family that just does not display guns in the house, or talk about guns.

12. Natasha goes to church with her boyfriend, Duane, every Sunday, and also to Bible Study every Wednesday evening. Natasha is a sweet, loving young woman. To this day, she confides in me about the important problems and issues in her life.

13. Natasha grew up in a loving, supportive environment. She attended Oak Park High School. To my knowledge, she has never been in trouble before.

14. Natasha is not the kind of person who harasses others, spies on them, or causes trouble in their lives. She does not have that type of character. Natasha is not one to look for, or cause, trouble. Natasha stays away from trouble.

15. Natasha confided in me often about the trouble that Michelle Wilson has caused for her, and about how she was being falsely accused by her of serious crimes. Natasha was very afraid at being in this situation.

16. During the trial, Natasha talked to me and confided in me about her lawyer. She said that her lawyer did not seem to be trying to help her. He did not want to call witnesses in her defense. I know Natasha really wanted to testify, and she thought she was going to testify until her attorney rested her case without calling her to testify. Natasha thought it was her attorney's decision, and did not think there was anything she could do about it. .

17. I never had contact with Natasha's lawyer before trial. He never called me for any reason before trial. He never asked if I could testify about Natasha's character for being peaceful and law-abiding, and for not using violence to solve problems. I thought that his failure to talk to Natasha's family members was very unusual. Natasha's lawyer did not

call me nor did he ask me to write anything about Natasha for him. I was available to testify as a character witness for Natasha had I been asked to do so.

18. Natasha's lawyer did not speak to me at Court, except to introduce himself. He never spoke to me or other family members about the case.

19. The first time I got to stand up and speak on Natasha's behalf, and explain what kind of person she is, was when I wrote to the judge before she was sentenced.

20. On the first day of the trial, the prosecutor, Kenneth King, approached me and several members of our family. He looked very troubled. He spoke in the presence of several of us, including Natasha's mother, Rochelle Borden; Natasha's aunt, Gwyneth Carlisle; and Natasha's aunt, Stephanie Thompson Lewis. He told us he did not enjoy trying this case against Natasha; he said he found her case to be the first case he ever had that he wasn't comfortable handling. He said this case bothered him so much he had not been able to sleep the night before. He said he had gone to his supervisor to try to get authority to dismiss the case, or to at least to get Natasha a lesser charge, but his supervisor did not agree.

21. I realize I am Natasha's grandmother, and I am very close to her, and I love her very much. People might think I am just saying anything I can think of to help her. This is not true, because I do not lie for anyone.

22. I can testify truthfully to all the matters in this affidavit, and to any other matters within my knowledge, information and belief.

/s/ _____
SYLVANIA CARLISLE

Subscribed and sworn to before me
this 31st day of October , 2004.

Dolores M. Goldbetter
NOTARY PUBLIC
COUNTY OF: Wayne
ACTING IN THE COUNTY OF: _____
My commission expires: April 17, 2005

APPENDIX O

STATE OF MICHIGAN
IN THE COURT OF APPEALS

COA No. 248950
L.Ct. No. 02-014475

[Dated October 31, 2004]

PEOPLE OF THE STATE MICHIGAN,
Plaintiff-Appellee

vs

NATASHA LATHAM,
Defendant-Appellant.

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

AFFIDAVIT OF GWYNETH CARLISLE

GWNETH CARLISLE, having been sworn, states:

1. I am competent to testify to all matters contained within this affidavit, and to any other matters within my knowledge, information and belief.

2. I am Natasha Latham's Aunt. I am her mother's sister. Her grandmother, Sylvania Carlisle, is my mother.

3. I have known Natasha since the day she was born. She and I have always been close. To this day, she confides in me about the important problems and issues in her life.

4. I was about 16 years old when Natasha was born. Natasha lived in our home with her mother, and her grandmother for the first five years of her life. I spent a great deal of time with Natasha as she was growing up. I watched Natasha grow up into a young woman.

5. I also attended most of Natasha's trial and listened to the testimony.

6. Natasha is a sweet, kind and good girl, and always has been. She comes from a loving home where there was no violence. She did not grow up around violence.

7. Natasha does not have a character for committing violent acts to resolve problems. She has a reputation as a person who is peaceful and law-abiding. This is also my opinion. To my knowledge, she has never been in a fight.

8. In our family home, and in the homes of our relatives, we have never kept guns, except hunting rifles. The only guns in my house when Natasha was young were two hunting rifles that belonged to my father, which were kept locked up, and were never displayed in the house. My father took them out of the house only when he went hunting. I don't believe Natasha ever even knew about them.

9. Natasha does not know a thing about guns, because she was never near them, and our family does not talk about

them. She does not know what to do with a gun. I have never seen her with a gun, nor have I heard her talk about guns.

10. In high school, Natasha was always a good student. She did not get in fights and she never got suspended for anything. Natasha was an Honor Roll Student.

11. Natasha goes to church with her boyfriend, Duane, every Sunday, and also to Bible Study every Wednesday evening. Natasha is a sweet, loving young woman. Natasha is a non-violent person who attends church, respects others, and tries to be a good person.

12. In my opinion, it is not part of Natasha's character to engage in violence, to involve herself in a violent situation, to be provoked to fight, to seek out trouble, or to cause trouble for anyone. Natasha is a non-violent person.

13. Natasha is not the kind of person who harasses others, spies on them, or causes trouble in their lives. She does not have that type of character. Natasha is not one to look for, or cause, trouble. Natasha stays away from trouble.

14. Natasha confided in me often about the trouble that Michelle Wilson has caused for her, and about how she was being falsely accused by her of serious crimes. Natasha was very afraid at being in this situation.

15. Before her trial, Natasha's trial lawyer never contacted me to ask me to testify about what I know about her character for being peaceful and law-abiding, and for not using violence to solve problems. He never asked me to say or write anything on her behalf, even after she was convicted. He never asked if I could testify during her trial about her character. I was available to testify if I had been asked to do

so. But I was not asked, so I did not testify, but I did watch the trial. I was shocked at the false testimony presented against Natasha during the trial.

16. During the trial, Natasha's lawyer did not speak to me at Court, while we were waiting in the courtroom, or in the hallway, except to introduce himself. He never spoke to me or other family members about the case.

17. During the trial, Natasha talked to me and confided in me about her lawyer. She said that her lawyer did not seem to be trying to help her. He did not want to call witnesses in her defense. I know Natasha really wanted to testify, and she thought she was going to testify until her attorney rested her case without calling her to testify. Natasha thought it was her attorney's decision, and did not think there was anything she could do about it.

18. At the trial, Natasha's lawyer did not do anything to stand up for her. In my opinion, the trial was a waste of time on Natasha's side, because she never got a defense. The lawyer did not show the jury her side of the story at all, and she did not have a chance because of him.

19. The first time I got to stand up and speak on Natasha's behalf, and explain what kind of person she is, was when I wrote to the judge before she was sentenced.

20. On the first day of the trial, the prosecutor, Kenneth King, approached me and several members of our family. He looked very troubled. He spoke in the presence of several of us, including Natasha's mother, Rochelle Borden; Natasha's grandmother, Sylvania Carlisle; and Natasha's aunt Stephanie Thompson Lewis. He told us he did not enjoy trying this case against Natasha; he said he found her case to

be the first case he ever had that he wasn't comfortable handling. He said this case bothered him so much he had not been able to sleep the night before. He said he had gone to his supervisor to try to get authority to dismiss the case, or to at least to get Natasha a lesser charge, but his supervisor did not agree.

21. I realize I am Natasha's aunt and I am very close to her, so people might think I am just saying anything I can think of to help her. This is not true, because I do not lie for anyone.

22. I can testify truthfully to all the matters in this affidavit, and to any other matters within my knowledge, information and belief.

/s/ _____
GWYNETH CARLISLE

Subscribed and sworn to before me
this 31st day of October, 2004.

/s/Dolores M. Goldbetter
NOTARY PUBLIC
COUNTY OF: Wayne
ACTING IN THE COUNTY OF :_____
My commission expires: April 17, 2005

APPENDIX P

STATE OF MICHIGAN
IN THE COURT OF APPEALS

Court of Appeals No. 248950
L.Ct. 02-014475

[Dated November 2, 2004]

PEOPLE OF THE STATE OF MICHIGAN Plaintiff-Appellee, -v- NATASHA LATHAM, Defendant-Appellant.	)

AFFIDAVIT OF JOHN F. ROYAL

STATE OF MICHIGAN)
)SS.
COUNTY OF WAYNE)

John F. Royal, being first duly sworn, deposes and says:

1. My name is John F. Royal. I am an Attorney licensed to practice law in the State of Michigan.

2. I have been retained by Defendant-Appellant Natasha Latham to take over responsibility for representing her on appeal in Michigan Court of Appeals No. 248950, which is an

appeal from her convictions in Wayne Circuit Court Case No. 02-014475.

3. I filed my substitution of counsel in this matter replacing predecessor counsel attorney Delphia J. Burton, on June 15, 2004.

4. On June 17, 2004, I conducted a telephone interview with Ms. Latham's previous appellate attorney, Delphia J. Burton. In that conversation, Ms. Burton agreed that in fact there had been a break down in the attorney client relationship between her and Ms. Latham over issues pertaining to the appeal.

5. Attorney Burton also informed me that she had suggested to Defendant Latham that she obtain a new appellate attorney, both because of the breakdown in the attorney-client relationship, and because she was restructuring her practice, and would no longer be handling criminal appeals.

6. Attorney Delphia J. Burton also informed me in the same conversation that during the time she represented Ms. Natasha Latham on appeal, she never interviewed the attorney who conducted the trial, attorney Brian Gagniak.

7. During that same conversation, attorney Delphia J. Burton informed me that she never had any knowledge of any tape recording of any 911 telephone calls in connection with this case. She told me she never had knowledge of any such tape and nor did she ever possess any such tape.

Further affiant sayeth not.

/s/
JOHN F. ROYAL

Subscribed and sworn to before me
this 2nd day of November, 2004.

/s/
NOTARY PUBLIC
COUNTY OF: Wayne
My commission expires: 10-21-06

APPENDIX Q

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE
PART IV. JURISDICTION AND VENUE
CHAPTER 81. SUPREME COURT

28 U.S.C. § 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.